ROBERT LETT. III
CHARLES FOUNTAIN

**PLAINTIFFS** 

VS

CI- CV-21-135

CHATHAM ASSET MANAGEMENT, LLC: THE MCCLATCHY COMPANY, LLC D/B/A SUN HARALD BLAKE KAPLAN JOHN DOES 1-13

**DEFENDANTS** 

I, Randy Carney, Clerk of the County Court, in and for said County and State the same being a Court of Record, having a seal, do hereby officially certify that I am the proper custodian of all the books, papers, records, files and documents of said Court and of the Seal thereof, and that the foregoing is a full, true and complete copy of documents listed for the above styled case:

#### - ENTIRE FILE

recorded, as full, true and complete as the same now appears of record in the records of JACKSON COUNTY, COUNTY COURT, PASCAGOULA, MISSISSIPPI in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Pascagoula in said County and State on this the 25 Day of 40, 2022.

RANDY CARNEY, Clerk

Circuit Court

Jackson County, Mississippi

D.C

## Mississippi Electronic Courts Nineteenth Circuit Court District (Jackson Circuit Court) CIVIL DOCKET FOR CASE #: 30Cl1:21-cv-00135-DH Internal Use Only

LETT, III et al v. CHATHAM ASSET MANAGEMENT, LLC

Assigned to: Dale Harkey

**Upcoming Settings:** 

None Found

Date Filed: 08/09/2021 Current Days Pending: 200 Total Case Age: 200

Jury Demand: None

Nature of Suit: Other Torts (175)

#### **Plaintiff**

ROBERT LETT, III

represented by Jesse Mitchell, III

The Mitchell Firm, PLLC 1062 Highland Colony Pkwy

Suite 150

RIDGELAND, MS 39157

769-300-0462 Fax: 601-510-1981

Email: <u>imitchell@tmflegal.com</u> ATTORNEY TO BE NOTICED

Karmel Ledonia Keeton

The Mitchell Firm, PLLC

1062 Highland Colony Pkwy Suite 150

RIDGELAND, MS 39157

769-300-0462 Fax: 601-510-1981

Email: kkeeton@tmflegal.com ATTORNEY TO BE NŎTICED

#### **Plaintiff**

**CHARLES FOUNTAIN** 

represented by Jesse Mitchell, III

(See above for address)

ATTORNEY TO BE NOTICED

Karmel Ledonia Keeton (See above for address)

ÀTTORNEY TO BE NÓTICED

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#### **Defendant**

CHATHAM ASSET MANAGEMENT,

LLC

TERMINATED: 11/09/2021

represented by Henry F Laird, mr.

Wise Carter Wise Carter 2510 14th Street **Suite 1125** 

**GULFPORT, MS 39501** 

228-867-7141 Fax: 228-867-7142

Email: hfl@wisecarter.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

#### **Defendant**

THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD

represented by Henry F Laird, mr.

(See above for address)

LEAD ATTORNEY ATTORNEY TO BE NOTICED

Defendant
BLAKE KAPLAN

represented by Henry F Laird, mr.
(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

## <u>Defendant</u> JOHN DOES 1-12

Date Filed	#	Docket Text			
08/09/2021	1_	Civil Cover Sheet. (McCreary, B.J.) (Entered: 08/11/2021)			
08/09/2021	2	COMPLAINT against CHATHAM ASSET MANAGEMENT, LLC, JOHN DOES 1-12, BLAKE KAPLAN, THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD, filed by CHARLES FOUNTAIN & ROBERT LETT, III. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E,) (McCreary, B.J.) (Entered: 08/11/2021)			
08/09/2021	4	SUMMONS Issued to CHATHAM ASSET MANAGEMENT, LLC. (McCreary, B.J. (Entered: 08/11/2021)			
08/11/2021	3	SUMMONS Issued to THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD (McCreary, B.J.) (Entered: 08/11/2021)			
08/11/2021	5	SUMMONS Issued to BLAKE KAPLAN. (McCreary, B.J.) (Entered: 08/11/2021)			
09/15/2021	<u>6</u>	MOTION to Dismiss by Defendant BLAKE KAPLAN (Laird, Henry) (Entered: 09/15/2021)			
09/15/2021	2	MOTION for Extension of Time to File Affidavits and Brief in Support of Motion to Dismiss by Defendant BLAKE KAPLAN (Laird, Henry) (Entered: 09/15/2021)			
09/15/2021	8	MOTION for Extension of Time to File Answer re 2 Complaint, by Defendant THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD (Laird, Henry) (Entered: 09/15/2021)			
09/17/2021	2	MOTION to Dismiss by Defendant CHATHAM ASSET MANAGEMENT, LLC (Laird, Henry) (Entered: 09/17/2021)			
09/17/2021	10	MOTION for Extension of Time to File Affidavits and Brief in Support of Motion to Dismiss by Defendant CHATHAM ASSET MANAGEMENT, LLC (Laird, Henry) (Entered: 09/17/2021)			
09/17/2021	11	AFFIDAVIT of Henry Laird by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN, THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 09/17/2021)			
09/22/2021	12	NOTICE of Hearing re 6 MOTION to Dismiss, 9 MOTION to Dismiss by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN (Laird, Henry) (Entered: 09/22/2021)			
09/28/2021	13	ORDER granting 10 Motion for Extension of Time to File. Signed by Dale Harkey on 09/27/2021. (McCreary, B.J.) (Entered: 09/28/2021)			
09/29/2021	14	AFFIDAVIT of James Ruggerio, Jr. by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN, THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 09/29/2021)			
10/04/2021	<u>15</u>	ORDER granting 6 Motion for time Signed by Dale Harkey on 10/01/2021. (McCreary, B.J.) Modified on 2/24/2022 (McCreary, B.J.). (Entered: 10/04/2021)			
10/04/2021	16	ORDER granting 8 Motion for Extension of Time to Answer.Signed by Dale Harkey on 10/01/2021. (McCreary, B.J.) (Entered: 10/04/2021)			

## Case: 36Cl12215 vv90658-HD60cl/RhbMF#: 12docnum ≥ 2 Filed: 02datefiled ≥ ag € ag € 36f 4

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10/08/2021	17	MEMORANDUM in Support re 2 MOTION to Dismiss by CHATHAM ASSET MANAGEMENT, LLC. (Laird, Henry) (Entered: 10/08/2021)			
10/11/2021	<u>18</u>	AFFIDAVIT of Blake Kaplan by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN, THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 10/11/2021)			
10/13/2021	19	NOTICE OF SERVICE of Responses to Request for Admissions by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN. (Laird, Henry) (Entered: 10/13/2021)			
10/14/2021	<u>20</u>	NOTICE OF SERVICE of Responses to Request for Admissions by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 10/14/2021)			
10/14/2021	<u>21</u>	RESPONSE in Support re 6 MOTION to Dismiss by BLAKE KAPLAN. (Laird, Henry) (Entered: 10/14/2021)			
10/14/2021	22	MEMORANDUM in Support re 2 MOTION to Dismiss by CHATHAM ASSET MANAGEMENT, LLC. (Laird, Henry) (Entered: 10/14/2021)			
10/18/2021	23	ANSWER to 2 Complaint, by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 10/18/2021)			
10/22/2021	24	NOTICE of Appearance by Karmel Ledonia Keeton on behalf of CHARLES FOUNTAIN, ROBERT LETT, III (Keeton, Karmel) (Entered: 10/22/2021)			
10/27/2021	<u>25</u>	NOTICE OF SERVICE of Responses to Interrogatories, NOTICE OF SERVICE of Responses to Request for Production by CHATHAM ASSET MANAGEMENT, LLC. (Laird, Henry) (Entered: 10/27/2021)			
10/29/2021	<u>26</u>	NOTICE OF SERVICE of Responses to Interrogatories, NOTICE OF SERVICE of Responses to Request for Production by BLAKE KAPLAN. (Laird, Henry) (Entered: 10/29/2021)			
10/29/2021	27	MOTION for Extension of Time to File Responses to Interrogatories and Requests for Production of Documents by Defendant THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD (Laird, Henry) (Entered: 10/29/2021)			
11/09/2021	28	STIPULATION of Dismissal as to Defendant, Chatham Asset Management, LLC by CHARLES FOUNTAIN, ROBERT LETT, III. (Keeton, Karmel) (Entered: 11/09/2021)			
11/10/2021	29	PLAINTIFFS RULE 41 STIPULATION OF DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANT CHATHAM ASSET MANAGEMENT, LLC. Signed by Dale Harkey on 11/09/2021. (McCreary, B.J.) (Entered: 11/10/2021)			
11/11/2021	30	RESPONSE in Opposition re 6 MOTION to Dismiss by CHARLES FOUNTAIN, ROBERT LETT, III. (Attachments: # 1 Exhibit A - Def Blake Kaplan's Answers to Pls' 1st Set of Interrogs, # 2 Exhibit B.1 - Def Blake Kaplan's Resp to Pls' 1st Set of RFPD, # 2 Exhibit B.2 - Tr of Req No 4,) (Keeton, Karmel) (Entered: 11/11/2021)			
11/29/2021	<u>31</u>	NOTICE OF SERVICE of Request for Production of Documents Propounded to The McClatchy Company, LLC d/b/a Sun Herald by CHARLES FOUNTAIN, ROBERT LETT, III. (Keeton, Karmel) (Entered: 11/29/2021)			
12/29/2021	<u>32</u>	NOTICE OF SERVICE of Interrogatories Propounded to Robert Lett, III and Charles Fountain, NOTICE OF SERVICE of Request for Admissions Propounded to Robert Lett, III and Charles Fountain, NOTICE OF SERVICE of Request for Production of Documents Propounded to Robert Lett, III and Charles Fountain by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 12/29/2021)			
01/24/2022	<u>33</u>	NOTICE OF SERVICE of Responses to Request for Production by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 01/24/2022)			
01/24/2022	<u>34</u>	NOTICE OF SERVICE of Interrogatories Propounded to Plaintiffs, Robert Lett, III and Charles Fountain by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 01/24/2022)			

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## Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 7 of 387 Filed: 08/09/2021 Page 2 of 5 Case: 30Cl1:21-cv-00135-DH Document #: 1 IN THE CIRCUIT COURT OF JACKSON COUNTY. MISSISSIPPI JUDICIAL DISTRICT, CITY OF JACKSON Docket No. Docket No. If Filed Prior to 1/1/94 PLAINTIFFS IN REFERENCED CAUSE - Page 1 of 1 Plaintiffs Pages IN ADDITION TO PLAINTIFF SHOWN ON CIVIL CASE FILING FORM COVER SHEET Plaintiff #2: Individual: Fountain Maicen Name, I Applicable Check (<) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: \_\_\_Check (/) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below: Business \_ Enter legal parts of business, corporation, partnership, agency - if Corporation, indicate state where incorporated \_Check (/) if Business Plaintiff is filing suit in the name of an entity other than the name above, and enter below: ATTORNEY FOR THIS PLAINTIFF: 103020 Bar # or Name: Jesse Mitchell, III Pro Hac Vice (/) Not an Attorney(/) Plaintiff #3: Individual: First Name ากรกเกย Check (//) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: \_Check (🗸) if Individual Plaintiff is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below: D/B/A Enter legal name of business, corporation, partnership, agency - If Corporation, Indicate state Where Incorporated Check (/) if Business Plaintiff is filing suit in the name of an entity other than the name above, and enter below. Attorney for this Plaintiff: Bar # or Name: Plaintiff #4: individual: \_

First Name Check (//) if Individual Plaintiff is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style:

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ATTORNEY FOR THIS PLAINTIFF: Bar # or Name:

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#### Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 8 of 387

Case: 30CI1:21-cv-00135-DH Document #: 1 Filed: 08/09/2021 Page 3 of 5 COURT OF JACKSON IN THE CIRCUIT COUNTY. MISSISSIPPI ☐ JUDICIAL DISTRICT, CITY OF JACKSON Docket No. Docket No. If Filed Clerk's Local ID Prior to 1/1/94 DEFENDANTS IN REFERENCED CAUSE - Page 1 of 1. Defendants Pages IN ADDITION TO DEFENDANT SHOWN ON CIVIL CASE FILING FORM COVER SHEET Defendant #2: |ndividua|: \_ Maiden Name, if Applicable Middle Iris. Check (/) If Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: \_\_\_Check (/) if Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below: Business The McClatchy Company, LLC - Incorporated in Delaware Enter legal name of business, corporation, partnership, agency - If Corporation, indicate state where incorporated Check (\*) If Business Defendant is being sued in the name of an entity other than the name above, and enter below: D/B/A Sun Herald Pro Hac Vice (/) Not an Atlomay(/) ATTORNEY FOR THIS DEFENDANT: \_\_\_\_ \_\_\_\_Bar# or Name: Henry Laird Defendant #3; Individual: Kaplan Makten Name, if Applicable Middle Intr. First Name Jul@e/IIIPiV Check (/) if individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: Check (/) if Individual Defendant is acting in capacity as Business Owner/Operator (D/8/A) or State Agency, and enter that name below: Business \_ Enter (egg) rame of business, corporation, partnership, agency - If Corporation, indicate state where incorporated \_\_Check (/) if Business Defendant is being sued in the name of an entity other than the name above, and enter below: Bar# or Name: Henry Laird ATTORNEY FOR THIS DEFENDANT: Not an Attorney(✓) Defendant #4: Individual: \_\_ Maiden Name, if Applicable Middle Inf. Check (/) if Individual Defendant is acting in capacity as Executor(trix) or Administrator(trix) of an Estate, and enter style: Estate of Check (/) If Individual Defendant is acting in capacity as Business Owner/Operator (D/B/A) or State Agency, and enter that name below: D/B/A Business . Enter legal name of business, corporation, partnership, agency - If Corporation, Indicate state where incorporated

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ATTORNEY FOR THIS DEFENDANT: \_\_\_\_\_\_Bar # or Name: \_\_\_\_\_

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## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

y,

AUG 0 9 2021

**PLAINTIFFS** 

RANDY CARNEY, CLERK

Y\_\_\_\_\_\_ COVIL ACTION NO.

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

#### COMPLAINT (JURY TRIAL DEMANDED)

COME NOW Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, by and through their counsel of record, and files this, their Complaint against Defendants, Chatham Asset Management, LLC; The McClatchy Company, LLC d/b/a Sun Herald; Blake Kaplan in his individual and official capacity as General Manager and Executive Editor; and John Does #1-12. In support of this Complaint, Plaintiffs state to wit the following:

#### **PARTIES**

- 1. Plaintiff, Robert Lee Lett, III, is an adult, male resident of Jackson County, Mississippi, residing at 4972 Huntington Drive Gautier, MS 39553.
- Co-Plaintiff, Charles Lamont Fountain, is an adult, male resident of Jackson County,
   Mississippi, residing at 3002 10th Street Pascagoula, Mississippi 39567.
- 3. Defendant, Chatham Asset Management, LLC ("Chatham"), is a foreign corporation organized and existing under the laws of the state of New Jersey, with its principal office located at 26 Main Street Suite 204 Chatham, NJ 07928. Chatham was at the time of the incident in question, and currently still is the owner of Defendant, The McClatchy Company, LLC d/b/a Sun Herald.

4. Defendant, The McClatchy Company, LLC d/b/a Sun Herald ("Sun Herald"), is a foreign corporation, incorporated in Delaware and licensed to do business in the State of Mississippi, with its principal office located at 2100 Q Street Sacramento, CA 95816. It may be served with process through its registered agent CT Corporation System, located at 645 Lakeland East Drive, Suite 101, Flowood, MS 39232.

- 5. Defendant, Blake Kaplan, is upon information and belief, an adult, male resident citizen of Jackson County, Mississippi and may be served with process at his place of residence, located at 1629 Springridge Road Gautier, MS 39553 or pursuant to Rule 4 of the Mississippi Rules of Civil Procedure, wherever he may be found. At all times relevant, Kaplan was employed by Defendant, Sun Herald, and supervised, controlled, and/or managed Sun Herald's newspaper with facilities located at 2505 14th Street Suite 400 Gulfport, MS 39501.
- 6. John Does #1-12 include those persons or entities unknown to Plaintiffs at this time who were owners, directors, managers, supervisors, editors, writers, journalists, producers, employees, contractors, and/or agents of Defendants, Chatham; Sun Herald; or Kaplan; and who played a role in the publication of the libelous advertisement at issue in this complaint (the "Advertisement"), failed to prevent the Advertisement's publication, and/or are generally liable to Plaintiffs as a result of the Advertisement's publication. Upon information and belief, John Does #1-12 are resident and nonresident Defendants doing business in the State of Mississippi or residing as citizens in the State of Mississippi. The filing of this Complaint is a filing against all Defendants and this Complaint will be appropriately amended in accordance with the Mississippi Rules of Civil Procedure when their identities are ascertained.
- 7. Plaintiffs reserve the right to identify and/or change the identity of these Defendants based on further investigation or any pre-trial discovery conducted in this action.

#### JURISDICTION, VENUE, AND JOINDER

- 8. Subject matter jurisdiction is appropriate pursuant to Miss. Const. art. VI §156 (1890) and Miss. Code Ann. § 9-7-81 because the Circuit Court of Jackson County, Mississippi has original jurisdiction and the amount in controversy in this action exceeds \$200.00.
- 9. Personal jurisdiction is appropriate over Defendant, Chatham, the New Jersey based owner of Defendant, Sun Herald, by means of piercing the corporate veil. Personal jurisdiction is appropriate over Defendant, Sun Herald, a Delaware company with its principal office in California, as Defendant committed a tort against two Mississippi residents and pursued business in the state of Mississippi, specifically in Jackson County. Personal jurisdiction is appropriate over Kaplan because he is an adult, Mississippi state resident.
- 10. Venue is proper pursuant, to Miss. Code Ann. §11-11-3, because the substantial alleged acts or omissions which led to Plaintiffs' injuries occurred in Jackson County, Mississippi. Moreover, in Short v. Versiga, the Mississippi Supreme Court held that, "venue... is proper in the district where the injured party resides and where the defamatory statements were published." Short v. Versiga, 283 So. 3d 182, 186 (¶12) (Miss. 2019) (citing Seidel v. Kirby, 296 F. Supp. 3d 745, 747 (D. Md. Oct. 27, 2017) (internal citations omitted)).
- 11. Joinder is appropriate pursuant to Miss. Civ. R. Proc. 20(a) as Plaintiffs assert against Defendants rights to relief arising out of the same series of transactions or occurrences, and questions of law and facts common to all these persons will arise in this action.

#### FACTS

- 12. Plaintiffs hereby incorporate and re-allege all claims herein set forth in the previous paragraphs.
- 13. At all times relevant in this case, Defendant, Sun Herald, was and currently is in name, the owner and publisher of a newspaper of general circulation known as the Sun Herald, which is

published in the city of Gulfport, Mississippi, at 2505 14th Street Suite #400 Gulfport, Mississippi 39501, and circulated daily throughout South Mississippi, including Jackson and Harrison counties.

In addition to print publications, the Sun Herald is also published online at www.sunherald.com.

- 14. Upon information and belief, on, or about September 4, 2020, Defendant, Chatham, acquired "substantially all assets" of Defendant, Sun Herald, in a Chapter 11 Bankruptcy auction. (See Ex. A The McClatchy Co., LLC Press Release). Per the exhibited press release, "the entirety of McClatchy's 30 news organizations and all of its employees transitioned to a new private entity under Chatham ownership." (See Ex. A).
- 15. On, or about December 8, 2020, the Sun Herald, with Kaplan acting individually and in his official capacity as General Manager and Executive Editor, published in mass, both in print and in digital format, the alleged false and defamatory Advertisement of and concerning Plaintiff and Co-Plaintiff within the Classifieds section of its newspaper. (See Ex. B Sun Herald Defamatory Advertisement 12/08/20). Specifically, the Advertisement was listed on page "4B" under the Classifieds' "Announcements" heading, and subheadings "Misc. Announcements" and "Health Notification."
- 16. The Advertisement names "Robert Lee Lett" and "Charles Lamont Fountain" as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing.
- 17. On, or about December 8, 2020, Plaintiff, Robert Lee Lett, III, personally called the Sun Herald call center inquiring into the Advertisement's publication and demanding a retraction.
- 18. On, or about December 8, 2020, a family member of Co-Plaintiff, Charles Lamont Fountain, called the Sun Herald call center inquiring into the same.
- 19. On, or about December 9, 2020, the Sun Herald, with Kaplan acting individually and in his official capacity as General Manager and Executive Editor, re-published in mass, both in print

and in digital format, the same false and defamatory Advertisement of and concerning Plaintiff and Co-Plaintiff in a separate edition of its newspaper on page "6B." (See Ex. C - Sun Herald Defamatory Advertisement 12/09/20).

- 20. On, or about December 11, 2020, the Sun Herald published a retraction, printed in three locations: (1) on page "5B" of the Classifieds section of the newspaper where the false and defamatory Advertisement initially appeared, (2) on page "2A" of the newspaper where retractions are generally posted, and (3) online. (See Ex. D Sun Herald Retraction 12/11/20). Overall, the retraction was generic in nature and woefully deficient. Most notably, it lacked specificity, accountability, and any remote given the severity of harm caused by the initial Advertisement's publication. Furthermore, the retraction failed to address the Sun Herald's second re-print of the Advertisement on December 9, 2020, and failed to acknowledge Robert Lee Lett, III, Charles Latnont Fountain, or Neal Rainey, the other gentleman harmed, by name.
- 21. Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, now bring this, their Complaint against Defendants for Defamation and Invasion of Privacy: False Light.

#### **STATUTORY REQUIREMENTS**

- 22. Plaintiffs hereby incorporate and re-allege all claims set forth in the previous paragraphs.
- 23. Pursuant to Mississippi Code § 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory.
- 24. On April 12, 2021, Plaintiffs Certified Mailed Defendant, Chatham, written notice; detailing with specificity each false and defamatory statement within the Advertisement in question,

which was signed for and received on April 15, 2021. (See Ex. E - Pl's Letters of Notice for Statutory Compliance).

- 25. On April 12, 2021, and April 17, 2021, Plaintiffs served Defendants, Sun Herald and Kaplan, written notice respectively via process server, detailing with specificity each false and defamatory statement within the Advertisement in question. (See Ex. E).
  - 26. As such, Plaintiffs have met the statutory requirement of Mississippi Code § 95-1-5.
- 27. Pursuant to Mississippi Code § 15-1-35 and case law, the statute of limitations for a defamation and invasion of privacy: false light claim in Mississippi is one year, beginning on "the date of publication of the allegedly libelous statement to a third person." *Staheli v. Smith*, 548 So. 2d 1299, 1302 (Miss. 1989) (citing Miss. Code Ann. § 15-1-35) (citations omitted).
- 28. Publication of the false and defamatory Advertisement to the Mississippi Gulf Coast community occurred on December 8, 2020, and December 9, 2020.
  - 29. Plaintiffs' claims are therefore timely and are not barred by the statute of limitations.

#### APPLICABLE STANDARD

- 30. Plaintiffs hereby incorporate and re-allege all claims set forth in the previous paragraphs.

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matter of public concern or interest?"." Stabeli v. Smith, 548 So. 2d 1299, 1304 (Miss: 1989) (citations omitted).

- 32. Plaintiffs are neither public officials nor public figures. Plaintiffs are private figures.
- 33. Plaintiffs have not sought or held any public office or government position. Nor have Plaintiffs appeared to the public to have a significant role in the business of government or public affairs.
- 34. Plaintiffs are not public figures as they are not candidates for public office, nor have they achieved pervasive fame or notoriety to be considered as such. Furthermore, as private figures, Plaintiffs have not voluntarily "thrust [themselves] . . . into the vortex of a matter of legitimate public interest" so as to be considered quasi- or vortex public figures. Forguson v. Walkins, 448 So. 2d 271, 277 (Miss. 1984) (citations omitted).
- 35. Based on the facts, Plaintiffs are not public officials or figures within the meaning of New York Times v. Sullivan, 376 U.S. 254 (1964) or its progeny.
- 36. Regardless of Plaintiffs' status, the sexual partners and STD/ HIV status of Plaintiffs are not a matter of public concern or interest. In fact, the Supreme Court has held that, "no aspects of life [are] more personal and private than those having to do with one's sexual organs and reproductive system." Young v. Jackson, 572 So. 2d 378, 382 (Miss. 1990). The Restatement Second of Torts further states that, "[s]exual relations . . . are normally entirely private matters, as are . . . many unpleasant or disgraceful or humiliating illnesses . . . ," Restatement (Second) of Torts § 652D cmt. b (Am. Law Inst. 1977).
  - 37. Based on the facts, the alleged defamation is a private matter.
- 38. Because Plaintiffs are private figures and the alleged defamation is a private matter, actual malice is not applicable. Rather, liability should be evaluated using a negligence standard.

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39. Liability for an invasion of privacy: false light claim should also be evaluated using a negligence standard when a private figure is involved. While "[t]here is no consensus as [to] the applicable standard [to apply to a false light privacy action by a private plaintiff], and the Mississippi Supreme Court has not [yet] addressed the issue[, in light of Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974),] numerous courts have logically concluded that a negligence standard should apply." Am. Nat'l Gen. Inc. Co. v. Jackson, 203 F. Supp. 2d 674, 685 n.17 (S.D. Miss 2001).

- 40. In Gertz, "[t]he Court substantially altered the direction of Flist Amendment law [... when it] established a public figure-private figure dichotomy." Wood v. Hustler Magazine, Inc., 736 F.2d 1084, 1090 (5th Cir. 1984). This dichotomy was first utilized in defamation lawsuits, in which an actual malice standard was applied to public and quasi-public officials and figures in evaluating liability, while a negligence standard was applied to private figures. See generally Gertz, 418 U.S. 323 (1974). The Court opined that, "states had a greater interest in protecting private figures who had not 'invite[d] attention and comment' and who generally 'lack effective opportunities for rebuttal." Wood, 736 F. 2d at 1090 (quoting Gertz, 418 U.S. at 344).
- 41. In the same manner, Gentz' dichotomy and analysis should be applied to Plaintiffs' claim for invasion of privacy: false light. In fact, "[o]n the particular issue of standard of care under false light . . . the Restatement [Second of Torts] qualifies its actual malice standard with a caveat [that . . .] leaves open the possibility that liability may be based on a showing of negligence as to truth or falsity." Id. at 1091.
- 42. Because the matter at issue in Plaintiffs' invasion of privacy: false light claim is their public defamation by Defendants, and the standard applied in Plaintiffs' defamation claim is a negligence standard, it follows that Plaintiffs be allowed to apply a negligence standard here.

#### CAUSES OF ACTION

#### FIRST CAUSE OF ACTION: DEFAMATION

- 43. Plaintiffs hereby incorporate and re-allege all claims set forth in the previous paragraphs.
- 44. Defendants defamed Plaintiffs by negligently publishing statements about them in which Defendants knew or should have known to be false.
  - 45. To recover in a defamation lawsuit under Mississippi law, a plaintiff must establish:
  - (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Fulton v. Mississippi Publishers Corp., 498 So. 2d 1215, 1216 (Miss. 1986) (citing Restatement (Second) of Totts § 558 (Am. Law Inst. 1997)).

#### 46. Defendants' statement that:

Health Notification HEALTH DEPT. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT www.msdhs.com: NEAL RAINEY 38 of PASCAGOULA, CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA, ROBERT LEE LETT 39 of MOSS POINT (NOTIFIED 12-7-2020), 601-576-7400 mshealthdcpt@mail.com

(See Ex. B) is false as it concerns Plaintiffs. Specifically, per a December 2020 phone call between Plaintiff, Robert Lee Lett, III, and the Mississippi State Department of Health ("MSDH"), and a December 2020 phone call between a family member of Co-Plaintiff, Charles Lamont Fountain, the health department was not notified to contact Plaintiff or Co-Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff or Co-Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff and Co-Plaintiff are not STD/HIV positive, nor have they had sexual relations with a STD/HIV positive person or persons as Defendants' statement unmistakably portrays and as

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Plaintiff and Co-Plaintiff reasonably understood Defendants' statement to mean. Plainly stated, Defendants' statement concerning Plaintiff and Co-Plaintiff is not true. Defendants' later retraction further supports this falsity noting that, "[t]he Sun Herald has learned that the health department did not forward the advertisement to the newspaper . . . ." (See Ex. C). In fact, simple review of Defendants' statement shows that both the MSDH's website and email address are fictitious accounts, ending in ".com" rather than ".gov," the domain used by official government organizations in the United States.

- Defendants' statement is defamatory as it concerns Plaintiff and Co-Plaintiff in that Defendants' false narrative about Plaintiff and Co-Plaintiff's private lives, including their sexual partners and STD/HIV status, "tends... to harm the reputation[s] of [Plaintiff and Co-Plaintiff so] as to lower [them] in the estimation of the community or to deter third persons from associating or dealing with [them]." Restatement (Second) of Torts § 559 (Am. Law Inst. 1997).
- 48. Defendants' false and defamatory statement is also "of and concerning Plaintiff" as the written statement specifically lists Plaintiff, Robert Lee Lett, III's name: "Robert Lee Lett," and identifying information: "39," and "of Moss Point." While the Advertisement does not list Plaintiff's entire legal name, "Robert Lee Lett, III," Plaintiff generally goes by "Robert Lee Lett" or "Robert Lett" within the community. As it relates to Plaintiff's age, while the Advertisement incorrectly states that Plaintiff is "39," (Plaintiff is 35 years old with a date of birth of June 16, 1985), Plaintiff is the only Robert Lee Lett of Moss Point, Mississippi and the surrounding area that is close enough in age to be the party referred to. Lastly, while Plaintiff currently resides in Gautier, Mississippi, and did so at the time of the Advertisement's publication, Plaintiff is originally from and well-known in Moss Point, Mississippi. A reasonable person could therefore understand the Advertisement as intending to refer to Plaintiff.

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49. The Restatement Second of Torts states that "[a] defamatory communication is made concerning the person to whom its recipient correctly, or mistakenly but reasonably, understands that it was intended to refer." Restatement (Second) of Torts § 564 (Am. Law Inst. 1997) (emphasis added). The comment section further notes that, "[i]t is enough that it is so understood even though he is so inaccurately described that it is extraordinary that the communication is correctly understood." Id. at cmt. a (emphasis added). Despite the inaccuracies in Defendants' statement, Plaintiff understood Defendants' statement as intending to refer to him. In fact, Plaintiff understood Defendants' statement as intending to refer to him so much so that on the first date of publication, Plaintiff called the Sun Herald's call center demanding a retraction.

- 50. Furthermore, "[i]t is not necessary that the plaintiff be designated by name; it is enough that there is such a description of or reference to him that those who hear or read reasonably understand the plaintiff to be the person intended." Id. at cmt. b (emphasis added). Members of the Mississippi Gulf Coast community who heard or read the Advertisement reasonably understood Plaintiff as being the person intended. Not only did members of the community reach out to Plaintiff and Plaintiff's family members via phone call and text message regarding the Advertisement, but social media posts naming Plaintiff as the intended party as well as a picture of Plaintiff and his wife were associated with the Advertisement and circulated.
- 51. Although the Advertisement failed to list Plaintiff, Robert Lee Lett, III's, entire legal name, correct age, or current place of residence, based on the information provided, Plaintiff as well as other members of the Mississippi Gulf Coast community reasonably understood the Advertisement as intending to refer to Plaintiff.
- 52. Defendants' false and defamatory statement is "of and concerning Co-Plaintiff" as the written statement specifically lists Co-Plaintiff's name: "Charles Lamont Fountain," and identifying information: "42," and "of Pascagoula." Given the information provided, Co-Plaintiff as well as other

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members of the Mississippi Gulf Coast community reasonably understood the Advertisement as intending to refer to Co-Plaintiff.

- 53. Defendants published defamatory matter about Plaintiff and Co-Plaintiff to a third party. Specifically, Defendants intentionally or negligently communicated false and defamatory information about Plaintiff and Co-Plaintiff to parties other than Plaintiff and Co-Plaintiff, when on or about December 8, 2020, Defendants printed and distributed to readers a paper-copy of its daily newspaper, containing the alleged libelous Advertisement about Plaintiff and Co-Plaintiff within the Classifieds section. Defendants further published defamatory matter about Plaintiff and Co-Plaintiff to a third party when said Advertisement was posted in Sun Herald's online newspaper at www.sunherald.com, and when Defendants re-printed and distributed a second paper edition to readers on or about December 9, 2020. As a result of Defendants' publication, the Advertisement was further circulated within the Mississippi Gulf Coast Community via social media platforms, word of mouth, and text message.
- 54. As it relates to publication amongst Defendants, Plaintiff and Co-Plaintiff assert an agency theory. See Restatement (Second) of Torts § 577 cmt. f (Am. Law Inst. 1997) (stating that "One is liable for the publication of defamation by a third person whom as his servant, agent or otherwise he directs or procures to publish defamatory matter.").
- 55. Defendants' publication constitutes two publications, each with their own cause of action. The Restatement Second of Torts states that, "[a]ny one edition of a book or newspaper ... is a single publication." Id. at § 577A(3). Defendants published two separate editions of the Sun Herald on December 8, 2020, and December 9, 2020, respectively, each containing the alleged defamatory Advertisement.
- 56. Plaintiff and Co-Plaintiff did not consent to the publication of defamatory matter concerning them.

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57. Defendants' publication was unprivileged. Neither an absolute nor conditional/qualified privilege was in existence at the time of the Advertisement's publication to provide Defendants immunity from liability.

- 58. Defendants were negligent. Defendants owed Plaintiff and Co-Plaintiff a duty of care to act with a reasonable level of care in publishing the Advertisement at issue. Defendants breached this duty when Defendants failed to act in a manner consistent with those in the journalism profession. Specifically, Defendants failed to research, fact check, or verify the obviously false information contained within the Advertisement. Defendants failed to verify the source of information, let alone the source's trustworthiness. Defendants failed to review the Advertisement and edit for any errors or falsities and/or Defendants' processes for review and safeguard failed or were not properly employed. Defendants further failed to supervise or manage the editing process. Overall, Defendants failed to follow good journalistic practices, including internal policies and procedures. Defendants were the direct and proximate cause of Plaintiff and Co-Plaintiff's damages. Due to Defendants' breach, a false and defamatory statement about Plaintiff and Co-Plaintiff was published to the Mississippi Gulf Coast community. As a result of Defendants' publication, Plaintiff and Co-Plaintiff suffered and will suffer damages as set out below.
- 59. Actionability of Defendants' statement is apparent as Plaintiff and Co-Plaintiff claim the existence of special harm due to its publication. Namely, psychiatric, psychological, and therapeutic expenses.
- 60. Actionability of Defendants' statement is also apparent irrespective of special harm as Defendants published a false statement about Plaintiff and Co-Plaintiff that is considered "defamation per se."
- 61. The Supreme Court has held that if a statement is "libelous per se, proof of a malicious intent is not necessary to sustain the action; [further] it is not necessary to allege or prove special

damages, because the law presumes damages per se from the writing of the libelous words." Smith v. Byrd, 225 Miss. 331, 342 (1955) (citations omitted).

- 62. Generally, Mississippi follows the common law rule that, "[a]ny written or printed language which tends to injure one's reputation, and thereby expose him to public hatred, contempt or ridicule, degrade him in society, lessen him in public esteem or lower him in the confidence of the community is actionable per se." Fulson, 498 So. 2d at 1217 (citations omitted).
  - 63. Statements are further actionable per se if they are:
  - (1) Words imputing the guilt or commission of some criminal offense involving moral turpitude and infamous punishment. (2) Words imputing the existence of some contagious disease. (3) Words imputing unfitness in an officer who holds an office of profit or emolument, either in respect of morals or inability to discharge the duties thereof. (4) Words imputing a want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business; and . . . (5) words imputing to a female a want of chastity.

Phillips Bmshers, L.P v. Winstead, 129 So. 3d 906, 928 (§76) (Miss. 2014) (citing Speed v. Scott, 787 So. 2d 626, 632 (Miss. 2001) (emphasis added) (citations omitted)).

64. Defendants' Advertisement alleging Plaintiff and Co-Plaintiff were being sought by a government agency for testing of a communicable disease is defamation per se, and more precisely "libel per se" as it is written defamation. (See Ex. B).

#### SECOND CAUSE OF ACTION: INVASION OF PRIVACY PALSE LIGHT

- 65. Plaintiffs hereby incorporate and re-allege all claims set forth in the previous paragraphs.
- 66. Defendants invaded Plaintiffs' privacy by knowingly, intentionally, willfully, or negligently publicizing statements about Plaintiff and Co-Plaintiff which were highly offensive to a reasonable person, and which Defendants knew or should have known to be false.

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#### 67. Generally,

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

- (a) The false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) The actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Restatement (Second) of Torts § 652E (Am. Law Inst. 1997).

- Defendants gave publicity to a matter concerning Plaintiffs when Defendants published a defamatory advertisement about Plaintiff and Co-Plaintiff in two editions of their print and online newspaper on, or about December 8 and 9, 2020. This matter was "of and concerning Plaintiff and Co-Plaintiff," as previously discussed in their claim for defamation, as the Advertisement specifically identified Plaintiff and Co-Plaintiff by name and included additional identifying information. By printing this matter in a newspaper with a daily circulation rate of 13,848 print readers in the year 2020 and 794,000 unique online visitors in the month of December. Defendants "communicated this matter to the public at large, or to so many persons that the matter [was] regarded as substantially certain to become one of public knowledge." Id. at § 652D cmt. 2. Moreover, Defendants' publication was further circulated within the Mississippi Gulf Coast Community via social media platforms, word of mouth, and text message.
- 69. The matter publicized placed Plaintiff and Co-Plaintiff in a false light. As addressed in their defamation claim, Defendants' statement regarding Plaintiff and Co-Plaintiff was false and defamatory in nature.
- 70. The false light Plaintiff and Co-Plaintiff were placed in was highly offensive to the reasonable person. The Restatement Second of Torts states that "[I]t is only when there is such a

<sup>&</sup>lt;sup>1</sup>The McClatchy Co., LLC, Our Impact Markets, https://www.mcclatchy.com/our-impact/markets/sun-herald/#navlink=mi\_footer (last visited Apr. 1, 2021).

major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position . . . ." Id at § 652D cmt. c. Here, publicity given to Plaintiff and Co-Plaintiff's alleged sexual partners and STD/HIV status would be highly offensive to the reasonable person as one's sexual organs and reproductive system are strongly regarded as personal and private. See Young, 572 So. 2d 378, 382 (Miss. 1990).

- 71. A negligence standard of liability should be applied as it relates to the actor's knowledge of the truth or falsity of the publicized matter as more thoroughly discussed in the Applicable Standard heading above and as analyzed in Plaintiff and Co-Plaintiff's defamation claim.
  - 72. Plaintiffs plead their second cause of action as an additional remedy.

#### **DAMAGES**

- 75. As a direct and proximate consequence and result of the negligence alleged above, Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, suffered, and will suffer, the following injuries and damages:
  - a. Future psychiatric, psychological, and thempeutic expenses;
  - b. Injury to reputation and personal humiliation;
  - c. Mental anguish and suffering;
  - d. All damages allowed by law in defamation and invasion of privacy actions specified under the Mississippi Constitution, federal, and state laws.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, demand a trial by jury and a judgment from and against Defendants for actual and compensatory damages in an amount to be determined by a jury, together with pre-judgment and post-judgment interest in an amount to be determined at trial. Plaintiffs further pray that this Court will award punitive damages against the individual Defendants, Plaintiffs' costs in pursing this lawsuit, including attorneys' fees, and any other relief to which they may be entitled under Mississippi law.

Plaintiffs reserve the right to amend this Complaint as needed.

RESPECTFULLY SUBMITTED, this the 6th day of August 2021.

# ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

By: /s/ Jesse Mitchell, III

Jesse Mitchell, III (MSB #103020)

Attorney for Plaintiff

#### OF COUNSEL:

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Email: jmitchell@tmflegal.com kkeeton@tmflegal.com legalassistant@tmflegal.com

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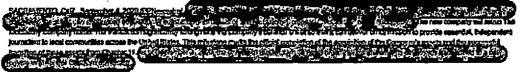
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# McClatchy Acquired by Chatham Asset Management, LLC

McClatchy emerges with strong balance sheet, positioned for success



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# Thanksgiving surge in COVID-19 cases arrives at Gulf Coast

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#### Five-time Grand Slam doubles champion, Hall of Famer dies at 78

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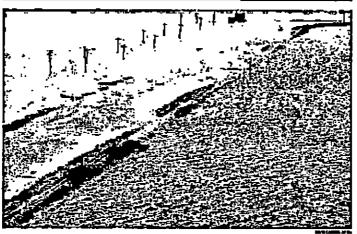


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## Coast man pleads guilty to price gouging on virus protective gear



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## Water quality, flooding mean low grade for major watershed

### COVID-19 deaths in Mississippi top 4,000

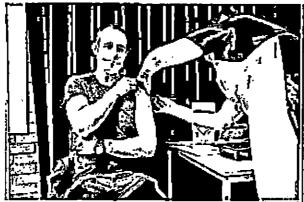
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# FDA analysis favors approval for Pfizer's vaccine for use in US

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# Reeves expands state mask mandate, tightens limitations



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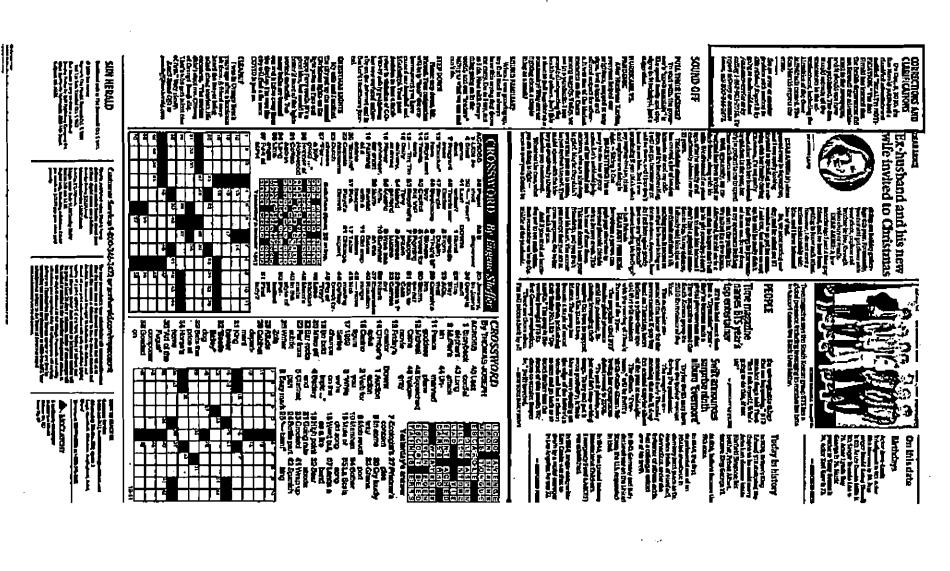
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#### PROOF OF SERVICE - MISS. CODE & 95-1-5 NOTICE

Chatham Asset Management, LLC 26 Main Street Suite #204 Chatham, NJ 07928

I, the undersigned process server, served the requisite Miss. Code f 95-1-5 Notice upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

- () FIRST CLASS MAIL AND ACKNOWLEDGMENT OF SERVICE, By mailing (by first class mail, postage prepaid), on the date stated in the attached Notice, copies to the person served, together with copies of the form of notice and acknowledgment and return cavelope, postage prepaid, addressed to the sender (Attach completed acknowledgment of receipt pursuant to M.R.C.P. Form 1B).
- () PERSONAL SERVICE. I personally delivered copies of the Notice on the \_\_\_day of April, 2021, to Chatham Asset Management, LLC, where I found said person(s) in State of Mississippi
- (X) CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served).

At the time of the service I was at least 18 years of age and not a party to this action.

Fee fot service: \$ 25.00

Process server must list below (Please print or type)

Name: Dedra Martin Brent

Address: 1062 Highland Colony Parkway Suite #150

Ridgeland, MS 39157

Telephone (769) 300-0462

STATE OF MISSISSIPPI COUNTY OF MADISON

Dedra Mattin Brent personally appeared before me, the undersigned authority in and for the state and county aforesaid, and states on oath, upon first being duly swom by me, that the matters and facts set forth in the foregoing "Proof of Service-Miss. Code § 95-1-5 Notice" are true and correct as therein

stated.

Process Server (Signature)

Sworn to and subscribed before me this the 2 day of April, 2021.

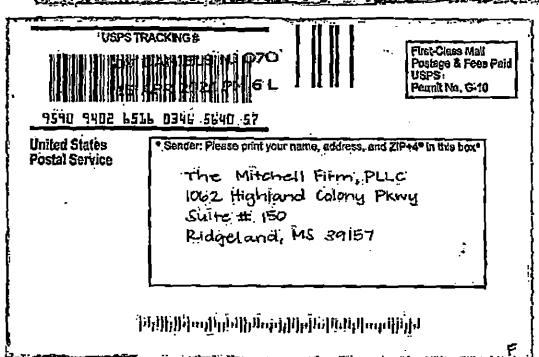
Notary Public

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 27 of 387 Complete this section on deliveny Case SENDER GOMFLERE THE SECTION # Complete terres 1, 2, and 3; ... ... Print your home and address on the revence so that we can recum the oard to you. Ci Backes C. Dale Of Cally o Minoch this card to the Dank of the maldisca. or on the troot if space perities... D. to the my indicate all orders before 17/12/2019 Article Additional to. chathain Acect Nanagementica 210 Hair Straute 11204 Chatham NU 07928 Deduction continued by the Milested Meson a Dentey (DEparted Differention)

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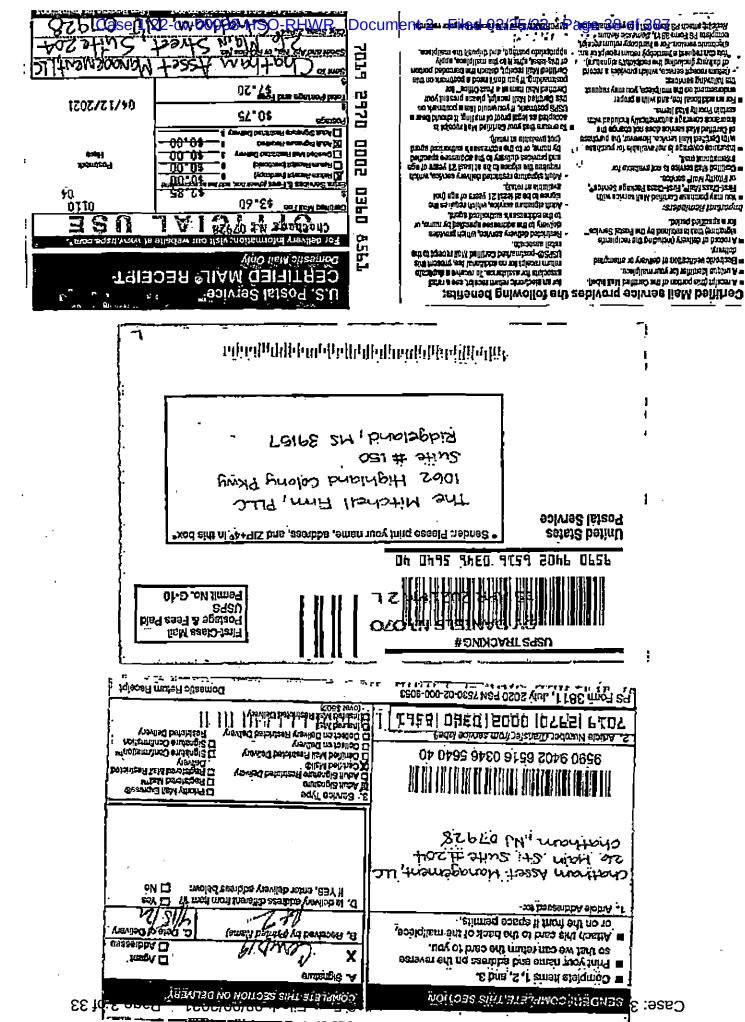
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# THE LITCHELL FIRM TRIAL ATTORNEYS

.April:12,-2021.

Chatham Asset Management, LLC

26 Main Street Suite 204

Chatham, NJ 07928

To Whom It May Concern,

VIA CERTIFIED MAIL

Pursuant to Mississippi Code Section, 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Robert Lee Lett, III's, written notice in compliance with the Code.

On, or about December 8, 2020, The McClatchy Company, LLC, whose assets are owned by you, Chatham Asset Management, LLC, and for whom Blake Kaplan serves as Executive Editor and General Manager, printed and published in mass a fictitious and defamatory advertisement or article within its daily Mississippi Gulf Coast newspaper, the Sun Herald. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, under the "Announcements" heading in the Classifieds section, and under the subheadings: "Misc. Announcements" and "Health Notification." This advertisement was further re-printed in a separate print edition of the Sun Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain, but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Robert Lee Lett as having been reported as coming into contact with-an STD/HIV positive person or persons, and to report to the nearby health department for testing. These statements are false. Specifically, the following statements from the article are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY-HEALTH DEPT. ROBERT LEE LETT 39 of MOSS POINT (NOTIFIED 12-7-2020)..."

Per a December 2020 phone call between Plaintiff and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

#### 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

#### 3. "39"

Plaintiff is 35 years old. DOB: 6/16/1985. This identifier is false, but not necessarily defamatory.

#### 4. "mshealthdept@mail.com"

The MSDH email address published in the Sun Herald does not exist. Further, email addresses for United States' government entities end in ".gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

While this advertisement does not list Plaintiff's entire legal name, correct age, or current place of residence, based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this article as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and ridiculed Plaintiff regarding the defamatory statements.

By printing and disseminating an advertisement of this nature, journalism standards and ethics for accuracy and truth in reporting were violated, as well as internal policies and procedures. This advertisement was blatantly false on its face and should have been intercepted by the editing department at The McClatchy Company, LLC, or by Blake Kaplan through simple review. Both The McClatchy Company, LLC and Blake Kaplan utterly failed in this regard, neglecting their editorial duties. As owner of The McClatchy Company, LLC, Chatham Asset Management, LLC is also vicariously liable.

Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for both your company's and employees' actions, or lack thereof, is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was woofully inadequate and extremely short in duration to suffice. This response should have been as loud and as powerful as the initial actions The McClatchy Company, LLC and Blake Kaplan took when they first defamed Robert Lee Lett, III.

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#### Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 41 of 387

Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought The Mitchell Firm's counsel in this case. Should any questions or concerns arise regarding this matter, feel free to contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020)

THE MITCHELL FIRM, PLLC

/klk Enclosures

Page 3

11.

#### **Defamatory Advertisement**



11.

#### Retraction

# CORRECTIONS AND CLARIFICATIONS

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-FICATION," The Sun Herald has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The Sun Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the error.

See an error or another problem with content in this edition? Report it by going to sunherald.com /eustomer-service or by calling 1-888-905-2036. To report delivery or account issues, call 800-346-2472.

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ITCHELL FIRM TRIAL FIRM ATTORNEYS

April 12, 2021 -

Chatham Asset Management, LLC

26 Main Street Suite 204"

Chatham, NJ 07928

To Whom It May Concern,

VIA CERTIFIED MAIL

Pursuant to Mississippi Code Section, 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Charles Lamont Fountain's written notice in compliance with the Code.

On, or about December 8, 2020, The McClatchy Company, LLC, whose assets are owned by you, Chatham Asset Management, LLC, and for whom Blake Kaplan serves as Executive Editor and General Manager, printed and published in mass a fictitious and defamatory advertisement or article within its daily Mississippi Gulf Coast newspaper, the San Henild. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, under the "Announcements" heading in the Classifieds section, and under the subheadings: "Misc. Announcements" and "Health Notification." This advertisement was further re-printed in a separate print edition of the San Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain, but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Charles Lamont Fountain as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing. Based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this advertisement as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and ridiculed Plaintiff regarding the defamatory advertisement. However, these statements are false. Specifically, the following statements from the advertisement are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT... CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA (NOTIFIED 12-7-2020)...."

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Per a December 2020 phone call between Plaintiff's family member and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

#### 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

#### 3. "mshealthdept@mail.com"

The MSDH email address published in the Sun Herald does not exist. Further, email addresses for United States' government entities end in ".gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

By printing and disseminating an advertisement of this nature, journalism standards and ethics for accuracy and truth in reporting were violated, as well as internal policies and procedures. This advertisement was blatantly false on its face and should have been intercepted by the editing department at The McClatchy Company, LLC, or by Blake Kaplan through simple review. Both The McClatchy Company, LLC and Blake Kaplan utterly failed in this regard, neglecting their editorial duties. As owner of The McClatchy Company, LLC, Chatham Asset Management, LLC is also vicariously liable.

Due to the egtegious nature of this false information, a full retraction and public apology expressing remotes and taking responsibility for both your company's and employees' actions, or lack thereof, is watranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was weefully inadequate and extremely short in duration to suffice. This response should have been as loud and as powerful as the initial actions The McClatchy Company, LLC and Blake Kaplan took when they first defamed Charles Lamont Fountain.

Nonetheless, due to the vast exposure this faisity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought The Mitchell Firm's counsel in this case. Should any questions or concerns arise regarding this matter, feel free to contact the firm at (769) 300-0462.

Sincerely.

Jesse Mitchell, III (MS Bar No. 103020)

THE MITCHELL FIRM, PLLC

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/klk Enclosutes

#### **Defamatory Advertisement**



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#### Retraction

# CORRECTIONS AND CLARIFICATIONS

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-FICATION." The Sun Herald has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The Sun Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the error.

See an error or another problem with content in this edition? Report it by going to sunherald.com /customer-service or by calling 1-888-905-2036. To report delivery or account issues, call 800-346-2472.

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## PROOF OF SERVICE - MISS. CODE § 95-1-5 NOTICE

The McClatchy Company, LLC d/b/a Sun Herald Attn: C.T. Corporation System Registered Agent 645 Lakeland East Drive Suite #101 Flowood, MS 39232

I, the undersigned process server, served the requisite Miss. Code § 95-1-5 Notice upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

- () FIRST CLASS MAIL AND ACKNOWLEDGMENT OF SERVICE. By mailing (by first class mail, postage prepaid), on the date stated in the attached Notice, copies to the person served, together with copies of the form of notice and acknowledgment and tetum envelope, postage prepaid, addressed to the sender (Attach completed acknowledgment of receipt pursuant to M.R.C.P. Form 1B).
- (X) PERSONAL SERVICE. I personally delivered copies of the Notice on the \(\frac{12}{2}\) day of April, 2021, to The McClatchy Company. LLC d/b/a Sun Herald, where I found said person(s) in Rankin County of the State of Mississippi.
- () CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served).

At the time of the service I was at least 18 years of age and not a party to this action. Fee for service: \$25.

Process server must list below (Please print or type)

Name: Dedra Martin Brent

Address: 1062 Highland Colony Parkway Suite #150

Ridgeland, MS 39157

Telephone: (769) 300-0462

STATE OF MISSISSIPPI COUNTY OF <u>Madiso</u>

Dedra Martin Brent personally appeared before me, the undersigned authority in and for the state and county aforesaid, and states on oath, upon first being duly sworn by me, that the matters and facts set forth in the foregoing "Proof of Service-Miss. Code § 95-1-5 Notice" are true and correct as therein stated.

Process Server (Signature)

Sworn to and subscribed before me this the 12th day of April, 2021.

JUSTIN GAUTHIE

Feb. 21, 2022

Notary Public

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April 12, 2021.

**ATTORNEYS** 

VIA PROCESS SERVER

The McClatchy Company, LLC d/b/a Sun Herald

Attn: C.T. Corporation System

Registered Agent

645 Lakeland East Drive Suite 101

Flowood, MS 39232

To Whom It May Concern,

Pursuant to Mississippi Code Section 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Robert Lee Lett, III's, written notice in compliance with the Code.

On, or about December 8, 2020, you, The McClatchy Company, LLC, whose assets are owned by Chatham Asset Management, LLC, and for whom Blake Kaplan serves as your Executive Editor and General Manager, printed and published in mass a fictitious and defamatory advertisement or article within your daily Mississippi Gulf Coast newspaper, the Sun Herald. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, funder the "Announcements" heading in the Classifical section, and under the subheadings; "Misc. Announcements" and "Health Notification." This advertisement was further reprinted in a separate print edition of the Sun Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain, but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Robert Lec Lett'as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing. These statements are false. Specifically, the following statements from the advertisement are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT... ROBERT LEE LETT 39 of MOSS POINT (NOTIFIED 12-7-2020)..."

Per a December 2020 phone call between Plaintiff and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

#### 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

#### 3. "39"

Plaintiff is 35 years old. DOB: 6/16/1985. This identifier is false, but not necessarily defamatory.

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Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought. The Mitchell Firm's counsel in this case. Should any questions or concerns arise regarding this matter, feel free to contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020)

THE MITCHELL FIRM, PLLC

/klk Enclosures

Page 3

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## **Defamatory Advertisement**



Page4

#### Retraction

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April:12, 2021-

VIA PROCESS SERVER

The McClatchy Company, LLC d/b/2 Sun Herald

Atm: C.T. Corporation System

Registered Agent

645 Lakeland East Drive Suite 101.

Flowood, MS 39232

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Per a December 2020 phone call between Plaintiff's family member and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Morcover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

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#### 3. "mshealthdept@mail.com"

The MSDH email address published in the Sun Herald does not exist. Further, email addresses for United States' government entities end in ".gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

By printing and disseminating an advertisement of this nature, journalism standards and ethics for accuracy and truth in reporting were violated, as well as internal policies and procedures. This advertisement was blatantly false on its face and should have been intercepted by your editing department at The McClatchy Company, LLC, or by Blake Kaplan through simple review. Both you and Blake Kaplan utterly failed in this regard, neglecting your editorial duties. As owner of The McClatchy Company, LLC, Chatham Asset Management, LLC is also vicariously liable.

Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for both your company's and employees' actions, or lack thereof, is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was woofully inadequate and extremely short in duration to suffice. This response should have been as loud and as powerful as your initial actions when you and Blake Kaplan first defamed Charles Lamont Fountain.

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Case: 30Cl1:21-cv-00135-DH Document #: 2-5 Filed: 08/09/2021 Page 21 of 33

Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought The Mitchell Firm's counsel in this case. Should any questions or concerns arise regarding this matter, feel free to contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020)

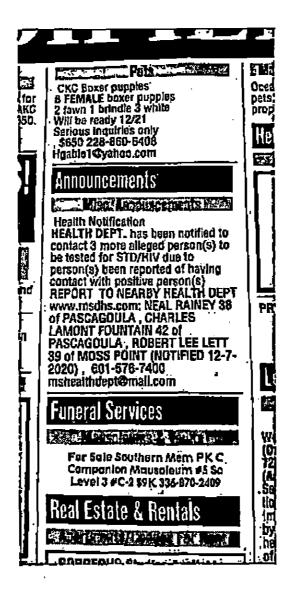
THE MITCHELL FIRM, PLLC

/klk Enclosures

Page 3

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## **Defamatory Advertisement**



#### Retraction

# CORRECTIONS AND CLARIFICATIONS

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-PICATION." The Sun Herald has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The Sun Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the citor.

See an error or another problem with content in this edition? Report it by going to sunkerald.com /eustomer-service or by calling 1-888-905-2036. To report delivery or account issues, call 800-346-2472.

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Case: 30Cl1:21-cv-00135-DH Document #: 2-5 Filed: 08/09/2021 Page 24 of 33

#### PROOF OF SERVICE - MISS. CODE § 95-1-5 NOTICE

Mr. Blake Kaplan 1629 Springridge Road Gautier, MS 39553

I, the undersigned process server, served the requisite Miss. Code f. 95-1-5 Notice upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

- () FIRST CLASS MAIL AND ACKNOWLEDGMENT OF SERVICE. By mailing (by first class mail, postage prepaid), on the date stated in the attached Notice, copies to the person served, together with copies of the form of notice and acknowledgment and return envelope, postage prepaid, addressed to the sender (Attach completed acknowledgment of receipt pursuant to M.R.C.P. Form 1B).
- (X) PERSONAL SERVICE. I personally delivered copies of the Notice on the <u>12</u> day of April, 2021, to <u>Blake Kaplan</u>, where I found said person(s) in <u>The free</u> County of the State of Mississippi.
- () CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served).

At the time of the service I was at least 18 years of age and not a party to this action. Fee for service: \$\sum\_{\infty} \frac{\infty}{\infty} \frac{\inf

STATE OF MISSISSIPPI COUNTY OF <u>Jakson</u>

and county aforesaid, and states on oath, upon first being duly sworn by me, that the matters and facts set forth in the foregoing "Proof of Service-Miss. Code § 95-1-5 Notice" are true and correct as therein stated.

Process Server (Signature)

worm as the standard before me this the 190 day of April, 2021.

Flotary Public D No. 68234 Consisting Explana February 11, 2023

Notary Public

April 12: 2021

TITCHELI FIRM TRIAL TRIAL TRIAL TRIAL TRIAL TRIAL

Mr. Blake Kaplan 1629 Springridge Road Gautier, MS 39553

Mr. Kaplan

**VIA PROCESS SERVER** 

Pursuant to Mississippi Code Section 95-1-5 prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Robert Lee Lett, III's, written notice in compliance with the Code.

On, or about December 8, 2020, you, Blake Kaplan, individually and as Executive Editor and General Manager of The McClatchy Company, LLC, whose assets are owned by Chatham Asset Management, LLC, printed and published in mass a fictitious and defamatory advertisement or article within the daily Mississippi Gulf Coast newspaper, the San Herald. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, under the "Announcements" heading in the Classifieds section, and under the subheadings: "Misc. Announcements" and "Health Notification." This advertisement was further re-printed in a separate print edition of the Sun Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Robert Lee Lett as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing. These statements are false. Specifically, the following statements from the advertisement are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT... ROBERT LEE LETT 39 of MOSS POINT (NOTIFIED 12-7-2020)..."

Per a December 2020 phone call between Plaintiff and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

#### 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the San Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

#### 3. "39"

Plaintiff is 35 years old. DOB: 6/16/1985. This identifier is false, but not necessarily defamatory.

#### 4. "mshealthdept@mail.com"

The MSDH email address published in the Sun Herald does not exist. Further, email addresses for United States' government entities end in ".gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

While this advertisement does not list Plaintiff's entire legal name, correct age, or current place of residence, based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this advertisement as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and ridiculed Plaintiff regarding the defamatory statements.

By printing and disseminating an advertisement of this nature, you violated journalism standards and ethics for accuracy and truth in reporting, as well as internal policies and procedures. This advertisement was blatantly false on its face and should have been intercepted by you or the editing department at The McClatchy Company, LLC through simple review. You utterly failed in this regard however, neglecting your editorial duties. As owner of the Sun Herald, both The McClatchy Company, LLC and Chatham Asset Management, LLC are also vicariously liable.

Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for your actions, or lack thereof, is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was woefully inadequate and extremely short in duration to suffice. Your response should have been as loud and as powerful as your initial actions when you first defamed Robert Lee Lett, III.

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Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought 'The Mitchell Firm's counsel. Should any questions or concerns arise regarding this matter, please contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020) THE MITCHELL FIRM, PLLC

/klk Enclosures

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#### **Defamatory Advertisement**



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#### Retraction

# CORRECTIONS AND CLARIFICATIONS

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-FICATION." The Sun Heraid has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The Sun Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the error.

See an error of another problem with content in this edition? Report it by going to sunherald.com /customer-scrvice or by calling 1-888-905-2036. To report delivery or account issues, call 800-346-2472.

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Page 30 of 33

Case: 30Cl1:21-cv-00135-DH Document #: 2-5 Filed: 08/09/2021
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TRIAL

Mr. Blake Kaplan

VIA PROCESS SERVER

1629 Springridge Road

Gautier, MS 39553

Mr. Kaplan,

Pursuant to Mississippi Code Section, 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Charles Lamont Fountain's written notice in compliance with the Code:

On, or about December 8, 2020, you, Blake Kaplan, individually and as Executive Editor and General Manager of The McClatchy Company, LLC, whose assets are owned by Chatham Asset Management, LLC, printed and published in mass a fictitious and defamatory advertisement or article within the daily Mississippi Gulf Coast newspaper, the Sun Herald. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, under the "Announcements" heading in the Classifieds section, and under the subheadings: "Misc. Announcements" and "Health Notification." This advertisement was further re-printed in a separate print edition of the Sun Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Charles Lamont Fountain as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing. Based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this advertisement as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and ridiculed Plaintiff regarding the defamatory statements. However, these statements are false. Specifically, the following statements from the advertisement are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT... CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA (NOTIFIED 12-7-2020)...."

Per a December 2020 phone call between Plaintiff's family member and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

#### 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

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Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for your actions or lack thereof is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was woefully inadequate and extremely short in duration to suffice. Your response should have been as loud and as powerful as your initial actions when you first defamed Charles Lamont Fountain.

Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought The Mitchell Firm's counsel. Should any questions or concerns arise regarding this matter, please contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020)

THE MITCHELL FIRM, PLLC

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/klk Enclosures Case: 30Cl1:21-cv-00135-DH Document #: 2-5 Filed: 08/09/2021 Page 32 of 33

#### **Defamatory Advertisement**



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#### Retraction

# CORRECTIONS AND CLARIFICATIONS

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-FICATION." The Sun Herald has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The Sun Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the enci,

See an error or another problem with content in this edition? Report it by going to sunherald.com/customer-service or by ealling I-888-905-2036. To report delivery or account issues, call 800-346-2472.

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Case: 30Cl1:21-cv-00135-DH Document #: 3 Filed: 08/11/2021 Page 1 of 1

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

CIVIL ACTION NO. \_

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

DEFENDANTS

#### SUMMONS

THE STATE OF MISSISSIPPI COUNTY OF JACKSON

TO: THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD ATTN: C.T. CORPORATION SYSTEM 645 LAKELAND EAST DRIVE, SUITE 101 **FLOWOOD, MS 39232** 

#### NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. You are required to mail or hand-deliver a copy of a written response to the Complaint to Jesse Mitchell, III, Esq., the attorney for the Plaintiffs, whose mailing address is: The Mitchell Firm, PLLC, 1062 Highland Colony Parkway, Suite 150, Ridgeland, Mississippi, Telephone: (769)300-0462, Facsimile: (601) 510-1981.

YOUR RESPONSE MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THIS SUMMONS AND COMPLAINT OR A JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your ISSUED under my hand and scal of said Court, this the \_\_\_\_\_\_ day of Augus\_2021.

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Duing Mulany, De response with the Clerk of this Court within a reasonable time afterward.

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 70 of 387

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

CIVIL ACTION NO. \_

21-135(3)

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

#### SUMMONS

THE STATE OF MISSISSIPPI COUNTY OF JACKSON

TO: CHATHAM ASSET MANAGEMENT, LLC 26 MAIN STREET, SUITE 204 CHATHAM, NJ 07928

#### **NOTICE TO DEFENDANT(S)**

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. You are required to mail or hand-deliver a copy of a written response to the Complaint to Jesse Mitchell, III, Esq., the attorney for the Plaintiffs, whose mailing address is: The Mitchell Firm, PLLC, 1062 Highland Colony Parkway, Suite 150, Ridgeland, Mississippi, Telephone: (769)300-0462, Facsimile: (601) 510-1981.

YOUR RESPONSE MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THIS SUMMONS AND COMPLAINT OR A JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

ISSUED under my hand and seal of said Court, this the

IACKSON COUNTY CLERK

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 71 of 387

Case: 30Cl1:21-cv-00135-DH Document #: 5 Filed: 08/11/2021 Page 1 of 1

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

v.

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**PLAINTIFFS** 

CIVIL ACTION NO.

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

DEFENDANTS

#### **SUMMONS**

THE STATE OF MISSISSIPPI COUNTY OF JACKSON

TO: BLAKE KAPLAN

1629 SPRINGRIDGE ROAD **GAUTIER, MISSISSIPPI 39553** 

#### **NOTICE TO DEPENDANT(S)**

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. You are required to mail or hand-deliver a copy of a written response to the Complaint to Jesse Mitchell, III. Esq., the attorney for the Plaintiffs, whose mailing address is: The Mitchell Firm, PLIC, 1062 Highland Colony Parkway, Suite 150, Ridgeland, Mississippi, Telephone: (769)300-0462, Facsimile: (601) 510-1981.

YOUR RESPONSE MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THIS SUMMONS AND COMPLAINT OR A JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

ISSUED under my hand and seal of said Court, this the \_\_\_\_\_ day of \_\_HUGUST, 2021.

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 72 of 387

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION OF DEFENDANT BLAKE KAPLAN

COMES NOW Defendant Blake Kaplan pursuant to Mississippi Rule of Civil Procedure 12 and files this his motion to dismiss the Complaint on the grounds of improper venue and failure to state a claim upon which relief can be granted.

Defendant Blake Kaplan therefore moves to dismiss the Complaint filed by Plaintiffs.

RESPECTFULLY SUBMITTED this the 15th day of September, 2021.

#### **BLAKE KAPLAN**

By: <u>s/ Henry Laird</u> HENRY LAIRD

#### OF COUNSEL:

Henry Laird (MSB#1774)
WISE CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 15th day of September, 2021.

s/ Henry Laird HENRY LAIRD

#### OF COUNSEL:

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 74 of 387

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# MOTION OF DEFENDANT BLAKE KAPLAN FOR TIME TO SUBMIT AFFIDAVITS AND BRIEF IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION TO DISMISS

COMES NOW Defendant Blake Kaplan and files this his motion for thirty days time in which to file affidavits and a memorandum brief in support of his Mississippi Rule of Civil Procedure 12 Motion to Dismiss.

RESPECTFULLY SUBMITTED this the 15th day of September, 2021.

#### **BLAKE KAPLAN**

By: <u>s/ Henry Laird</u> HENRY LAIRD

#### **OF COUNSEL:**

#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 15th day of September, 2021.

s/ Henry Laird	
HENRY LAIRD	

#### OF\_COUNSEL:

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 76 of 387

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cy-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

## MOTION FOR TIME OF DEFENDANT THE McCLATCHY COMPANY, LLC

COMES NOW Defendant The McClatchy Company, LLC, and files this its motion for thirty additional days time from September 17, 2021 in which to plead, answer, or otherwise defend the Complaint filed by Plaintiff, including but not limited to all affirmative defenses, including Mississippi Rule of Civil Procedure 12 defenses.

RESPECTFULLY SUBMITTED this the 15th day of September, 2021.

THE McCLATCHY COMPANY, LLC, a Delaware limited liability company

By: <u>s/ Henry Laird</u> HENRY LAIRD

#### OF COUNSEL:

# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 15th day of September, 2021.

s/ Henry Laird	
HENRY LAIRD	

#### OF COUNSEL:

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Case: 30Cl1:21-cv-00135-DH Document #: 9 Filed: 09/17/2021 Page 1 of 2

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

**V.** .

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION OF DEFENDANT CHATHAM ASSET MANAGEMENT, LLC

COMES NOW Defendant Chatham Asset Management, LLC pursuant to Mississippi Rule of Civil Procedure 12 and files this motion to dismiss the Complaint on the grounds of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process and failure to state a claim upon which relief can be granted.

Defendant Chatham Asset Management, LLC therefore moves to dismiss the Complaint filed by Plaintiffs.

**RESPECTFULLY SUBMITTED** this the 17th day of September, 2021.

CHATHAM ASSET MANAGEMENT, LLC

By: <u>s/ Henry Laird</u> HENRY LAIRD

#### **OF COUNSEL:**

#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 17th day of September, 2021.

s/ Henry Laird	_
HENRY LAIRD	

#### OF COUNSEL:

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 80 of 387

Case: 30CI1:21-cv-00135-DH Document #: 10 Filed: 09/17/2021 Page 1 of 2

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and **CHARLES FOUNTAIN** 

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

**CHATHAM ASSET MANAGEMENT, LLC;** THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

DEFENDANTS

1.

MOTION OF DEFENDANT CHATHAM ASSET MANAGEMENT, LLC FOR TIME TO SUBMIT AFFIDAVITS AND BRIEF IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION TO DISMISS

COMES NOW Defendant Chatham Asset Management, LLC and files this motion for thirty days time in which to file affidavits and a memorandum brief in support of his Mississippi Rule of Civil Procedure 12 Motion to Dismiss.

RESPECTFULLY SUBMITTED this the 17th day of September, 2021.

CHATHAM ASSET MANAGEMENT, LLC

s/ Henry Laird By:

HENRY LAIRD

## OF COUNSEL:

#### **CERTIFICATE OF SERVICE**

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Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: imitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 17th day of September, 2021.

s/ Henry Laird	
HENRY LAIRD	

#### **OF COUNSEL:**

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### AFFIDAVIT OF HENRY LAIRD

## STATE OF MISSISSIPPI COUNTY OF HARRISON

- I, Henry Laird, make this Affidavit as follows:
- 1. I am the attorney for Defendants, Chatham Asset Management, LLC; The McClatchy Company, LLC; and Blake Kaplan.
  - 2. I make this Affidavit upon personal knowledge.
  - 3. As attorney for Defendants, I have filed the following pleadings:
    - [Doc. #6] Mississippi Rule of Civil Procedure 12 Motion of Defendant Blake Kaplan filed on September 15, 2021;
    - [Doc. #7] Motion of Defendant Blake Kaplan for Time to Submit Affidavits and brief in Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss filed on September 15, 2021;
    - [Doc. #8] Motion for Time of Defendant The McClatchy Company, LLC filed on September 15, 2021;
    - [Doc. #9] Mississippi Rule of Civil Procedure 12 Motion of Defendant Chatham Asset Management, LLC filed on September 17, 2021; and
    - [Doc. #10] Motion of Defendant Chatham Asset Management, LLC for Time to Submit Affidavits and brief in Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss filed on September 17, 2021.

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4. I need thirty (30) days additional time until October18, 2021 in which to answer or otherwise defend the Complaint against Defendant, The McClatchy Company, LLC; to brief the motion to dismiss in favor of Defendant Chatham Asset Management, LLC with supporting affidavit/affidavits; and to brief the motion to dismiss of Defendant Blake Kaplan with supporting affidavit/affidavits.

- 5. The Complaint was filed by Plaintiffs on August 9, 2021; I have been recently retained to represent all three Defendants in this litigation; and I need the requested additional time to adequately represent the Defendants' interests. I cannot do so without the obtaining the additional time.
- 6. A representative of one of the Defendants with whom undersigned counsel is working to defend the Complaint is out of the country until on or about September 27, 2021; I need time to prepare affidavits in support of the two motions to dismiss; and I need time to research the facts of the case and analyze the law to adequately prepare briefs supporting the two motions to dismiss.
- 7. Counsel for Plaintiffs and I are trying to reach agreement on the wording of agreed orders for additional time.

HENRY LAIRD

SWORN TO AND SUBSCRIBED before me, this the 17th day of September, 2021.

Votany Public

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### NOTICE OF HEARING

Please take notice that Defendants, Blake Kaplan and Chatham Asset Management, LLC, will bring their Mississippi Rule of Civil Procedure 12 Motions to Dismiss [Doc. # 6 and 9, respectively] on for hearing before the Honorable Dale Harkey, in the Circuit Court of Jackson County, located at 3104 Magnolia Street, Pascagoula, Mississippi at 1:30 p.m. on Friday, November 12, 2021 or as soon as counsel may be heard.

Respectfully submitted, this the 22nd day of September, 2021.

CHATHAM ASSET MANAGEMENT, LLC; and BLAKE KAPLAN

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: hfl@wisecarter.com

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Telephone: 228/867-7141

#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorneys for Plaintiff

This the 22nd day of September, 2021.

s/ Henry Laird Henry Laird

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>
Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125
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# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT	LETT,	III and
CHARLES	S FOU	NTÁIN

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# SEP 2 8 2021

**PLAINTIFFS** 

RANDY CARNEY, CLERK

Y CIVILDACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

DEFENDANTS

#### **ORDER GRANTING MOTION FOR TIME**

ON Mississippi Rule of Civil Procedure 12 Motion to Dismiss of Defendant Chatham Asset Management, LLC [Doc. #9] and Motion of Defendant Chatham Asset Management, LLC for Time to Submit Affidavits and Brief in Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss [Doc. #10] the Court finds that the motion for time is well taken and should be granted.

The Court finds that Plaintiffs want to propound discovery to Defendant Chatham Asset Management, LLC to be responded to prior to the hearing on its Rule 12 motion to dismiss, to which Chatham Asset Management, LLC objects unless the Court first enters an order finding that answering the objected to discovery to prepare Plaintiffs for the motion to dismiss hearing does not constitute a walver by Chatham Asset Management, LLC of any of its Rule 12(b) grounds. It is therefore

ORDERED AND ADJUDGED that Defendant Chatham Asset Management, LLC must respond to discovery requests from Plaintiffs to prepare them for the upcoming hearing on Chatham Asset Management, LLC's motion to dismiss; and that responding to discovery from Plaintiffs (including any specific objections) does not constitute a waiver

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by Chatham Asset Management, LLC of any of its Rule 12(b) grounds for dismissal. It is further

ORDERED AND ADJUDGED that Chatham Asset Management, LLC has until October 18, 2021 to file a brief and/or file affidavits supporting its Motion to Dismiss [Doc. #9]; and Plaintiffs will have thirty (30) days from being served with the brief to respond; and thereafter the Chatham Asset Management, LLC will have five days to serve any rebuttal brief.

ORDERED AND ADJUDGED this the 27th day of September, 2021

CIRCUIT COURT JUDGE

**AGREED:** 

Jessie Mitchell, III

Counsel for Plaintiffs
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Ste. 150

Ridgeland, MS 39157 Telephone: 769/300-0462

Email:--imitchell@tmflegal.com

Henry Laild

Counsel for Defendents

Wise Carter

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Telephone: 228/867-7141

Email hff@wisecarter.com

Prepared by:

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# AFFIDAVIT OF James Ruggerio, Jr.

# STATE OF NEW JERSEY COUNTY OF MORRIS

- I, James Ruggerio, Jr., declare as follows:
- 1. I am over 18 years of age and am competent to make this Affidavit. I have personal knowledge of the facts stated herein, and they are true and correct to the best of my knowledge, information, and belief.
- 2. I am the Chief Operating Officer for the Defendant, Chatham Asset Management, LLC ("Chatham, LLC").
- 3. Chatham, LLC is a Delaware limited liability company with its principal place of business in Chatham, New Jersey.
- 4. Chatham, LLC does not do business in Mississippi. It is not registered to do business in Mississippi. Chatham, LLC does not maintain an office in Mississippi, does not maintain any bank accounts in Mississippi, does not own, use or possess any real property in Mississippi, and does not have any employees in Mississippi.

5. Chatham, LLC and The McClatchy Company, LLC. ("McClatchy, LLC") are separate limited liability companies. McClatchy, LLC is a Delaware limited liability compay with its principal office in Sacramento, California. McClatchy, LLC publishes the Sun Herald newspaper in Gulfport, Mississippi.

- 6. Chatham, LLC and McClatchy, LLC each keep separate company books, financial records and bank accounts. McClatchy, LLC files separate state tax returns and has its own Employer Identification Number; pays its own rent and expenses; purchases and owns its supplies, fixtures and furniture; hires and fires its own personnel; maintains all permits and licenses in its own name; runs its offices in Gulfport, Mississippi and is free of editorial control by Chatham, LLC. McClatchy does not enter into contracts on behalf of Chatham, LLC.
- 7. McClatchy, LLC is 100% owned by SIJ Intermediate, LLC. SIJ Intermediate, LLC is 100% owned by SIJ Holdings, LLC. SIJ Holdings, LLC is 100% owned by SIJ Parent Holdings, LLC. SIJ Parent Holdings, LLC is 100% owned by Chatham, LLC. These entities have no say in the newsroom or classified ads operations of any of the newspapers owned by Chatham, LLC.
- 8. Chatham, LLC does not control personnel decisions made with regard to McClatchy, LLC employees, including Defendant Blake Kaplan.
- 9. Chatham, LLC plays no part in the preparation of the news or classified ads published in the *Sun Herald* newspaper, including but not limited to the classified ad involved in this case.

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James Ruggerio, Jr., Chief Operating Officer

SWORN TO AND SUBSCRIBED before me, this the 17th day of September, 2021.

Notary Public

PETER ZDAZENSKI
NOTARY PUBLIC OF NEW JERSEY
Comm. # 50054569
My Commission Expires 2/10/2022

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# IN THE CIRCUIT COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

OCT U 4 2021

KANUT CARNEY, CLERK

PLAINTIFFS

V

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### ORDER GRANTING MOTION FOR TIME

ON Mississippi Rule of Civil Procedure 12 Motion to Dismiss of Defendant Blake Kaplan [Doc. #6] and Motion of Defendant Blake Kaplan for Time to Submit Affidavits and Brief in Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss [Doc. #7] the Court finds that the motion for time is well taken and should be granted.

The Court finds that Plaintiffs want to propound discovery to Defendant Blake Kaplan to be responded to prior to the hearing on his Rule 12 motion to dismiss, to which Blake Kaplan objects unless the Court first enters an order finding that answering the objected to discovery to prepare Plaintiffs for the motion to dismiss hearing does not constitute a waiver by Blake Kaplan of any of his Rule 12(b) grounds. It is therefore

ORDERED AND ADJUDGED that Defendant Blake Kaplan must respond to discovery requests from Plaintiffs to prepare them for the upcoming hearing on Blake Kaplan's motion to dismiss; and that responding to discovery from Plaintiffs (including any specific objections) does not constitute a waiver by Blake Kaplan of any of his Rule 12(b) grounds for dismissal. It is further

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ORDERED AND ADJUDGED that Blake Kaplan has until October 18, 2021 to file a brief and/or file affidavits supporting his Motion to Dismiss [Doc. #6]; and Plaintiffs will have thirty (30) days from being served with the brief to respond; and thereafter the Blake Kaplan will have five days to serve any rebuttal brief.

ORDERED AND ADJUDGED this the

**CIRCUIT COURT JUDGE** 

AGREED:

Jessie Mitchell, III Counsel for Plaintiffs The Mitchell Firm, PLLC 1062 Highland Colony Parkway, Ste. 150

Ridgeland, MS 39157 Telephone: 769/300-0462 Email: imitchell@tmflegal.com Henry Lakd

Counsel for Defendants

Wise Carter

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Gulfport, MS 39501 Telephone: 228/867-7141 Email: hfl@wisecarter.com

Prepared by:

# IN THE CIRCUIT COURT OF THE KSON COUNTY, MISSISSIPPI

<u></u> C	RDER GRANTING MOTION FOR T	'IME
CHATHAM ASSET MAN THE McCLATCHY CON d/b/a/ SUN HERALD; B and JOHN DOES 1-12	PANY, LLC	DEFENDANTS
<b>V</b> .:	CIVIL ACTION	NO. 30Cl1:21-cv-00135-DH
CHARLES FOUNTAIN	RANDY CARNEY, CLERK	PLAINTIFFS
ROBERT LETT, III and	OCT U 4 2021	

ON Motion for Time of Defendant The McClatchy Company, LLC to Answer Complaint [Doc. #8] the Court finds that the motion for time is well taken and should be granted.

The Court finds that Plaintiffs want to propound discovery to Defendant The McClatchy Company, LLC to be responded to prior to the hearing on any Rule 12 motion to dismiss it will file, to which The McClatchy Company, LLC objects unless the Court first enters an order finding that answering the objected to discovery to prepare Plaintiffs for The McClatchy Company, LLC's motion to dismiss hearing does not constitute a waiver by The McClatchy Company, LLC of any of its Rule 12(b) grounds. It is therefore

ORDERED AND ADJUDGED that Defendant The McClatchy Company, LLC must respond to discovery requests from Plaintiffs to prepare them for a upcoming hearing on The McClatchy Company, LLC's motion to dismiss; and that responding to discovery from Plaintiffs (including any specific objections) does not constitute a waiver by The McClatchy Company, LLC of any of its Rule 12(b) grounds for dismissal.

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ORDERED AND ADJUDGED that The McClatchy Company, LLC has until October 18, 2021 to answer or otherwise defend the Complaint [Doc. #2], including but not limited to filling a Mississippi Rule of Civil Procedure 12 Motion to Dismiss; and Plaintiffs will have thirty (30) days from being served with the Rule 12 motion to respond; and thereafter the McClatchy Company, LLC will have five days to serve any rebuttal brief.

ORDERED AND ADJUDGED this the

day of September, 2021

CIRCUIT COURT JUDGE

AGREED:

Jessie Mitchell, III Counsel for Plaintiffs

The Mitchell Firm, PLLC

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Ridgeland, MS 39157

Telephone: 769/300-0462

Email: imitchell@tmflegal.com.

Henry Laird

Counsel for Defendants

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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# BRIEF OF CHATHAM ASSET MANAGEMENT, LLC IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

On August 9, 2021 Plaintiffs Robert Lett, III and Charles Fountain filed their Complaint alleging claims of defamation and false light invasion of privacy [Doc. #2].

On September 17, 2021 Defendant, Chatham Asset Management, LLC ("Chatham") filed its Motion to Dismiss [Doc. #9] on the following grounds: lack of jurisdiction over the person; improper venue; insufficiency of process; insufficiency of service of process; and failure to state a claim upon which relief can be granted.

Chatham's Motion to Dismiss is set for oral argument in Pascagoula, Mississippi on November 12, 2021 at 1:30 p.m. This brief is submitted to support that part of the motion grounded on lack of personal jurisdiction pursuant to Mississippi Rule of Civil Procedure 12(b)(2).

In their Complaint, Plaintiffs allege incorrectly that Chatham is a foreign corporation organized and existing pursuant to the laws of the State of New Jersey with its principal place of business at 26 Main Street, Suite 204, Chatham, New Jersey 07928.

(Complaint, ¶ 3.) In fact, Chatham is a Delaware limited liability company with its principal place of business at the New Jersey address alleged.

At ¶ 9 of their Complaint, Plaintiffs incorrectly claim that personal jurisdiction is appropriate over Chatham, "the New Jersey based owner of Defendant, Sun Herald, by means of piercing the corporate veil".

At ¶ 46 of their Complaint, Plaintiffs allege the following classified ad was published by the *Sun Herald* on December 7, 2020:

Health Notification HEALTH DEPT. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been report of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT www.msdhs.com: NEAL RAINEY 38 of PASCAGOULA, CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA, ROBERT LEE LETT 39 of MOSS PONT (NOTIFIED 12-7-2020), 601-576-7400 mshealthdept@gmail.com

Nowhere in their Complaint do Plaintiffs allege any facts supporting the existence of any duty by Chatham to Plaintiffs nor any such duty which was breached by some act or omission of Chatham. Defendant Chatham has no connection whatsoever to the facts of this case as clearly set forth by James Ruggerio, Jr. in the following numbered paragraphs of his affidavit [Doc. #14]:

- 3. Chatham, LLC is a Delaware limited liability company with its principal place of business in Chatham, New Jersey.
- 4. Chatham, LLC does not do business in Mississippi. It is not registered to do business in Mississippi. Chatham does not maintain an office in Mississippi, does not maintain any bank accounts in Mississippi, does not own, use or possess any real property in Mississippi, and does not have any employees in Mississippi.
- 5. Chatham, LLC and The McClatchy Company, LLC ("McClatchy, LLC") are separate limited liability companies. McClatchy, LLC is a Delaware limited liability company with its principal office in

Sacramento, California. McClatchy, LLC publishes the *Sun Herald* newspaper in Gulfport, Mississippi.

- 6. Chatham LLC and McClatchy, LLC each keep separate company books, financial records and bank accounts. McClatchy, LLC files separate state tax returns and has its own Employer Identification Number; pays its own rent and expenses; purchases and owns it supplies, fixtures and furniture; hires and fires its own personnel; maintains all permits and licenses in its own name; runs its offices in Gulfport, Mississippi and is free of editorial control by Chatham, LLC McClatchy does not enter into contracts on behalf of Chatham, LLC.
- 7. McClatchy, LLC is 100% owned by owned by SIJ Intermediate, LLC. SIJ Intermediate is 100% owned by SIJ Holdings, LLC. SIJ Holdings, LLC is 100% owned by SIJ Parent Holdings, LLC. SIJ Parent Holdings, LLC is 100% owned by Chatham, LLC. These entities have no say in the newsroom operations of any of the newspapers owned by McClatchy.
- 8. Chatham, LLC does not control personnel decisions made with regard to McClatchy, LLC employees, including Defendant Blake Kaplan.
- Chatham, LLC plays no part in the preparation of the news or classification ads published in the Sun Herald newspaper, including but not limited to the classified ad involved in this case.

Since Chatham is a foreign limited liability company, Plaintiffs attempted to serve Chatham with process under Mississippi's long arm status at §13-3-57 Mississippi Code which provides:

Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state. Service of summons and process upon the defendant shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

Any such cause of action against any such nonresident, in the event of death or inability to act for itself or himself, shall survive against the executor, administrator, receiver, trustee, or any other selected or appointed representative of such nonresident. Service of process or summons may be had or made upon such nonresident executor, administrator, receiver, trustee, or any other selected or appointed representative of such nonresident as is provided by the Mississippi Rules of Civil Procedure, and when such process or summons is served, made or had against the nonresident executor, administrator, receiver, trustee, or other selected or appointed representative of such nonresident it shall be deemed sufficient service of such summon or process to give any court in this state in which such action may be filed, in accordance with the provisions of the statutes of the State of Mississippi or the Mississippi Rules of Civil Procedure, jurisdiction over the cause of action and over such nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident insofar as such cause of action is involved.

The provisions of this section shall likewise apply to any person who is a nonresident at the time any action nor proceeding is commenced against him even though said person was a resident at the time any action or proceeding accrued against him.

The Mississippi Supreme Court has had many occasions to determine this state's jurisdiction over nonresident defendants via the long-arm statute.

"The proper order when analyzing personal jurisdiction over nonresident defendants is to first consider whether the long-arm statute subjects a nonresident defendant to personal jurisdiction and then to consider whether the statute's application to that defendant offends the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution". *Estate of Jones v. Phillips*, 992 So. 2d 1131, 1137 (Miss. 2008), citing *Sorrells v. R&R Custom Coach Works, Inc.*, 636 So. 2d 661, 671 (Miss. 1994).

Plaintiffs bear the burden of establishing personal jurisdiction by *prima facie* evidence. The court considers affidavits, discovery, and oral testimony including any "uncontroverted allegations". *Long v. Vitkauskas*, 287 So. 3d 171, 178 (Miss. 2019).

"The threshold condition for application of the long-arm statute is the requirement that the nonresident corporation, over which personal jurisdiction is sought, is not a corporation [limited liability company] qualified to do business in this state". *Estate of Jones,* 1138, citing *Sorrels*, 671. McClatchy, LLC is a foreign (nonresident) limited liability company.

The next issue is whether the trial court's assertion of jurisdiction over the nonresident defendant under Mississippi's long-arm statute offends the Due Process Clause of Fourteenth Amendment. *Estate of Jones*, 1139. Due process requires "that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'". *Estate of Jones*, 1139, citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

"Historically, minimum contacts have been split into two types: those which invoke specific jurisdiction over a defendant and those that lead to general jurisdiction over a defendant". *Estate of Jones,* 1140, citing *Helicopteros Nacionales de Columbia S.A. v. Hall,* 466 U.S. 408, 414-415, notes 8, 9.

Chatham does not have minimum contacts with Mississippi sufficient to allow this Court to exercise specific jurisdiction over it. See the Affidavit of James Ruggerio, Jr. [Doc. # 14.] As previously discussed in this brief, Chatham has engaged in no activities in this state from which Plaintiff's claims arise or to which those claims relate. Instead, Plaintiffs allege causes of action related to or arising from a classified ad published by Defendant McClatchy *Sun Herald* newspaper. Chatham has no employees within Mississippi, and it did not take or publish the ad. In light of these facts, Plaintiffs cannot

establish Chatham has had sufficient minimum contacts with Mississippi upon which to base specific personal jurisdiction.

Plaintiffs likewise cannot establish that Chatham has undertaken continuous and systematic activities in Mississippi so as to warrant exercising general jurisdiction over it. "[W]hether a defendant is subject to general personal jurisdiction does not rest on 'whether a foreign corporation's in-forum contacts can be said to be in some sense continuous and systematic." Daimler AG v. Bauman, 571 U.S. 117, 139 (2014)). Rather, the "defendant's affiliations with the forum must be so systematic and continuous that they are rendered to be at home in the forum state." Daimler, 571 U.S. at 127 (emphasis added). "A corporate defendant is considered at home in its place of incorporation and its principal place of business." Daimler, 571 U.S. at 137 (emphasis added).

Plaintiffs' suit neither arises out of nor relates to any activity of Chatham in Mississippi. Chatham does not carry out business activities within Mississippi that are continuous or systematic so to render it at home in the state. Chatham is a Delaware limited liability company with its principal place of business in New Jersey. (Ruggerio Affidavit). Chatham is not registered to do business in Mississippi and does not do business in Mississippi, (Ruggerio Affidavit). Chatham's headquarters is in New Jersey, Chatham directs and controls its business activities. where (Ruagerio Affidavit). Moreover, Chatham owns no real property in Mississippi nor does it have any employees in Mississippi (Ruggerio Affidavit).

Nowhere in the Complaint do Plaintiffs articulate any specific act or omission which states a claim against Defendant Chatham. Due to Chatham's lack of minimum contacts to the State of Mississippi and due to Plaintiffs' failure to state any set of facts against

Chatham which would impose liability, the Plaintiffs seem to claim that Chatham is the agent or alter ego of McClatchy. As a matter of law that attempt should fail and the Complaint against Chatham be dismissed.

".... [A]bsent a sufficient allegation of particularized facts, judicial economy requires that the corporate veil should not be preliminarily pierced for long-arm jurisdiction on the mere unsubstantiated allegations in the pleadings". Canadian National Railway Co. v. Waltman, 94 So. 3d 1111, 1116 (Miss. 2012), citing with approval North American Plastics, Inc. v. Inland Shoe Mfg. Co., Inc. 592 F. Supp. 875, 879 (N.D. Miss. 1984).

In order for Plaintiffs to prove that Chatham is vicariously liable for the alleged torts of McClatchy and its employee, Defendant Blake Kaplan, or to prove that Chatham is the alter ego of McClatcy, the Complaint must allege facts indicating "(1) some frustration of expectations regarding the party to whom he looked for performance; (2) a flagrant disregard of corporate finalities by the defendant corporation and its principals; and (3) a demonstration of fraud or other equivalent misfeasance on the part of ...." Chatham. Canadian National Railway, 1116. Plaintiffs have not made any such allegations, nor can they according to Mr. Ruggerio's affidavit.

Piercing the corporate veil of a subsidiary to reach the parent corporation is not "lightly undertaken" by Mississippi courts. *Johnson v. Higgins*, 321 So. 2d at 285. "Courts do not take piercing the corporate veil lightly because of the chilling effect it has on corporate risk-taking." *Nash Plumbing, Inc. v. Shasco Wholesale Supply, Inc.*, 875 So. 2d 1077, 1082 (Miss. 2004).

Buchanan v. Ameristar Casino Vicksburg, Inc. 957 So. 2d 696, 978 (Miss. 2007).

Canadian National Railway also held:

A non-resident defendant may, on his pre-trial Rule 12(b)(2) motion to dismiss, litigate the inherent factual questions through the use of live testimony or affidavits.... If the court finds facts that sustain his defense, it

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should dismiss, as the presumption implicit in the well-pleaded allegations

rule has "spent its forces and vanished."

Canadian National Railway, 111.

Affidavits contesting personal jurisdiction over nonresident limited liability

companies, such as the Affidavit submitted by Mr. Ruggerio in this case, should be

considered by the trial court early on. R.C. Construction Company, Inc. v. National Office

622 So. 2d 1253, 1254 (Miss. 2012). "A non-resident defendant Systems, Inc.,

may, on his pre-trial Rule 12(b)(2) motion to dismiss, litigate the inherent factual questions

through the use of live testimony or affidavits". R.C. Construction Co., Inc., 1255.

CONCLUSION

For the reasons set forth, the Court should dismiss the Complaint pursuant to

Mississippi Rule of Civil Procedure 12(b)(2) since as a matter of law, the Court lacks

personal jurisdiction over Chatham.

**RESPECTFULLY SUBMITTED** this the 8th day of October, 2021.

CHATHAM ASSET MANAGEMENT, LLC

By: <u>s/ Henry Laird</u>

HENRY LAIRD

OF COUNSEL:

Henry Laird (MSB#1774)

WISE CARTER CHILD & CARAWAY, P.A.

2510 14<sup>th</sup> Street, Suite 1125

Gulfport, Mississippi 39501

Telephone: (228) 867-7141

hfl@wisecarter.com

8

#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 8th day of October, 2021.

s/ Henry Laird	
HENRY LAIRD	<del>-</del> <del>-</del>

# OF COUNSEL:

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 104 of 387

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### AFFIDAVIT OF BLAKE KAPLAN

## STATE OF MISSISSIPPI COUNTY OF HARRISON

I Blake Kaplan declare as follows:

- 1. I am over 18 years of age and am competent to make this Affidavit. I have personal knowledge of the facts stated herein, and they are true and correct to the best of my knowledge, information, and belief.
- 2. I have been an adult resident citizen of Gautier, Mississippi since before 2021.
- 3. From 2019 forward I have been a Regional Executive Editor for The McClatchy Company which later became The McClatchy Company, LLC. In that capacity, I am the Executive Editor of three newspapers owned by The McClatchy Company: the Sun Herald in Gulfport, Mississippi, The Telegraph in Macon, Georgia, and the Ledger-Enquirer in Columbus, Ga. I am also the general manger of the Sun Herald. I do not have GM duties at the Georgia properties.
- 4. As Regional Executive Editor my responsibilities are primarily news-related.

  I plan and strategize stories for each market and help edit the stories for fairness, spelling,

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grammar, truthfulness and libel. At times, I take calls from customers primarily about delivery and billing issues at the three newspapers. I represent each market in company meetings and work to deliver the best possible news report for each paper. As general manager of the Sun Herald, I represent the paper at public events, take calls as an official representative of the paper and deal with physical building and maintenance issues. I have no responsibility for the paper's advertising department or its revenues. I also am not in charge of financial budgeting.

- 5. In the 2016-2017 timeframe The McClatchy Company and now The McClatchy Company, LLC had all of its newspapers, including the *Sun Herald* of Gulfport, Mississippi, go to a company-wide approach to classified advertising. Requests for classified advertising are currently processed two ways. A customer may access an online computer page, type in the ad and pay by credit card, or they can verbally give the ad to representatives who work in a Texas call center. Because of the pandemic, employees at the call center are working remotely and could be elsewhere than Texas.
- 6. The classified ad at the center of this lawsuit was placed through the online computer page and paid for with a credit card. It was done anonymously, and the company's efforts to track the credit card to a specific person have been unsuccessful. I did not see or review the ad in question, as this is not part of my job duties.
- 7. I have no day-to-day knowledge of what content appears in the classified advertising section of the *Sun Herald* newspaper since the advertising is processed either electronically or by remote workers outside Mississippi. This was the process in place at the time the ad ran in December 2020.

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It is not part of my responsibility to review, edit, or proof classified ads. I do not 8. see them until they are published by the Sun Herald.

I knew nothing about the classified ad which is the subject of this litigation 9. until after it was published and had no responsibility for accepting or publishing the classified ad which is the subject of this litigation.

SWORN TO AND SUBSCRIBED before to his the HM day of Utoler,

2021.

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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# DEFENDANT CHATHAM ASSET MANAGEMENT, LLC AND BLAKE KAPLAN'S NOTICE OF SERVICE

COME NOW Defendants, Chatham Asset Management, LLC and Blake Kaplan by and through counsel of record and give notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant Chatham Asset Management, LLC's Responses to Plaintiffs' First Set of Request for Admissions; and
- 2. Defendant Blake Kaplan's Responses to Plaintiffs' First Set of Request for Admissions.

Respectfully submitted, this the 13th day of October, 2021.

CHATHAM ASSET MANAGEMENT, LLC Defendant

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

2510 14<sup>th</sup> Street, Suite 1125 Gulfport, MS 39501

Telephone: 228/867-7141 Facsimile: 228/867-7142

#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 13th day of October, 2021.

<u>s/</u>	Henr	/ Laird
		-

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125 Gulfport, MS 39501

Telephone: 228/867-7141 Facsimile: 228/867-7142

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

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CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

DEFENDANTS

# DEFENDANT THE McCLATCHY COMPANY, LLC'S NOTICE OF SERVICE

COMES NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

1. Defendant The McClatchy Company, LLC's Responses to Plaintiffs' First Set of Request for Admissions.

Respectfully submitted, this the 14th day of October, 2021.

THE McCLATCHY COMPANY, LLC Defendant

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Gulfport, MS 39501 Telephone: 228/867-7141 Facsimile: 228/867-7142

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Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 14th day of October, 2021.

s/	Henr	y Laird

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125

Gulfport, MS 39501

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

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CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# BRIEF OF DEFENDANT BLAKE KAPLAN IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12(b)(6) MOTION TO DISMISS

This brief is submitted in support of Defendant Blake Kaplan's ("Kaplan") Motion to Dismiss [Doc. #6] on failure to state a claim pursuant to Mississippi Rule of Civil Procedure 12(b)(6) and his supporting Affidavit [Doc. #18].

Plaintiffs filed their Complaint on August 9, 2021 [Doc. #2] alleging defamation and false light claims against Chatham Asset Management, LLC, The McClatchy Company, LLC, and Blake Kaplan.

In ¶ 5 of their Complaint, Plaintiffs allege that Blake Kaplan is an adult resident citizen of Jackson County, Mississippi and "At all times relevant, Kaplan was employed by Defendant, Sun Herald, and supervised, controlled, and/or managed Sun Herald's newspaper with facilities located at 2505 14th Street, Suite 400 Gulfport, MS 39501".

In ¶ 6, Plaintiffs allege that Kaplan "played a role in the publication of the libelous advertisement at issue in this complaint (the "advertisement"), failed to prevent the Advertisement's publication, and/or are generally liable to Plaintiffs as a result of the Advertisement's publication".

At ¶ 15, Plaintiffs allege that Blake Kaplan acted individually and in his official capacity as General Manager and Executive Editor, and published defamatory classified ad.

At¶ 19 of the Complaint, Plaintiffs allege that ".... the Sun Herald, with Kaplan acting individually and in his official capacity as General Manager and Executive Editor, re-published in mass, both in print and in digital format, the same false and defamatory Advertisement of and concerning Plaintiff and Co-Plaintiff in a separate edition of its newspaper on page "6B".

Mississippi is a "notice-pleadings" state, but Plaintiffs are required to place Blake Kaplan on reasonable notice of the claims they have. *City of Meridian v. \$104,960.00 U.S. Currency*, 231 So. 3d 972, 974-73 (Miss. 2017). In that case, the city of Meridian retained custody of personal property seized in a drug arrest. The city filed a petition for forfeiture of that property under §§ 41-29-153 (a)(5) and/or 41-29-153 (a)(7). The owner objected and opposed the petition. She filed a motion to dismiss the petition under Rule 12(b)(6).

The trial court granted the forfeiture, and on appeal, the Mississippi Supreme Court found that the petition alleged "Both the currency and the truck were subject to forfeiture under Section 41-29-153(b)...." It alleges that "the truck and currency had been used, or intended for use, or constituted proceeds in violation of the Mississippi Uniform Controlled Substances Law. .... And it states that the "truck and currency should be forfeited pursuant to Mississippi Code Annotated §§ 41-29-179(4) and 41-29-181(2). ...." The Supreme Court went on to hold that the forfeiture petition put the owner of the personal property "on reasonable notice of the city's claims, and it sufficiently

demonstrates a recognized cause of action exists upon which the city might prevail under some set of facts. The petition describes with specificity the property subject to forfeiture and provides when, where, and why it was seized".

"A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint, and an inquiry as to the legal sufficiency is essentially limited to the content of the complaint." *Griffin v. Citimortgage, Inc.*, 296 So. 3d 767, 771 (Miss. COA). In that case, the Court of Appeals affirmed the trial court's decision to dismiss that complaint for failure to state a claim pursuant to Rule 12(b)(6). The gist of the complaint was the mortgagor homeowners' claim against the mortgagee lender to stop foreclosure proceedings. The Court of Appeals found that the mortgagors alleged that the mortgagee breached the deed of trust but also found that the mortgagors cited only a single sentence in the deed of trust that had nothing to do with limiting the mortgagee's right of foreclosure upon mortgagors' default. The mortgagors therefore failed to put the mortgagee on notice of the basis for their claim that the foreclosure should have been stopped. The factual allegations failed to state a claim for relief against the mortgagee, Citimortgage. The complaint was dismissed. *Griffin*, 771-72.

## CONCLUSION

Since Plaintiffs' Complaint fails to put Defendant Blake Kaplan on notice of the basis of any claim, the Complaint should be dismissed pursuant to Mississippi Rule of Civil Procedure 12(b)(6). As a matter of law Plaintiffs completely fail to show why Blake Kaplan, as Editor and General Manager of the *Sun Herald* newspaper, can ever be held liable for the alleged defamation or false light invasion of privacy.

# **RESPECTFULLY SUBMITTED** this the 14th day of October, 2021.

# **CHATHAM ASSET MANAGEMENT, LLC**

By: <u>s/ Henry Laird</u> HENRY LAIRD

# OF COUNSEL:

Henry Laird (MSB#1774)
WISE CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

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Email: jmitchell@tmflegal.com
kkeeton@tmflegal..com

Attorney for Plaintiffs

SO CERTIFIED, this the 14th day of October, 2021.

s/ Henry Laird	
HENRY LAIRD	<del></del>

## **OF COUNSEL:**

Henry Laird (MSB#1774)
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## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# BRIEF OF CHATHAM ASSET MANAGEMENT, LLC IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12(b)(6) MOTION TO DISMISS

This brief is submitted in support of Chatham Asset Management, LLC's ("Chatham") Motion to Dismiss [Doc. #9] on failure to state a claim pursuant to Mississippi Rule of Civil Procedure 12(b)(6). On October 8, 2021 Chatham filed its Brief in Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss for Lack of Personal Jurisdiction on the ground of 12(b)(2) personal jurisdiction [Doc. #17]. Without re-urging its argument in the latter brief, Chatham incorporates those arguments in this brief.

Plaintiffs filed their Complaint on August 9, 2021 [Doc. #2] alleging defamation and false light claims against Chatham, and The McClatchy Company, LLC, and Blake Kaplan.

At ¶ 3 of the Complaint, Plaintiffs allege that Chatham is a non-resident company located in New Jersey which owns Co-Defendant The McClatchy Company, LLC which publishes the *Sun Herald* newspaper in Gulfport, Mississippi.

At ¶ 9 of the Complaint, Plaintiffs allege:

Personal jurisdiction is appropriate over Defendant, Chatham, the New Jersey based owner of Defendant, Sun Herald, by means of piercing the corporate veil. Personal jurisdiction is appropriate over Defendant, Sun Herald, a Delaware company with it principal office in California, as Defendant committed a tort against two Mississippi residents and pursued business in he state of Mississippi, specifically in Jackson County. Personal jurisdiction is appropriate over Kaplan because he is an adult, Mississippi state resident.

Other than merely alleging that they were piercing the corporate veil, Plaintiffs make no further allegation concerning that claim and completely fail to allege any facts to support the allegation.

At ¶ 14 of the Complaint, Plaintiffs allege that "....Defendant, Chatham, acquired 'substantially all assets' of Defendant, Sun Herald, in a Chapter 11 Bankruptcy auction". Plaintiffs make *no* allegation that Chatham has some sort of duty to Plaintiffs, particularly some duty which was breached.

Mississippi is a "notice-pleadings" state, but Plaintiffs are required to place Chatham on reasonable notice of the claims they have.

"A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint, and an inquiry as to the legal sufficiency is essentially limited to the content of the complaint." *Griffin v. Citimortgage, Inc.*, 296 So. 3d 767, 771 (Miss. COA). In that case, the Court of Appeals affirmed the trial court's decision to dismiss that complaint for failure to state a claim pursuant to Rule 12(b)(6). The gist of the complaint was the mortgagor homeowners' claim against the mortgagee lender to stop foreclosure proceedings. The Court of Appeals found that the mortgagors alleged that the mortgagee breached the deed of trust but also found that the mortgagors cited only a single sentence in the deed of trust that had nothing to do with limiting the mortgagee's right of foreclosure upon mortgagors' default. The mortgagors therefore failed to put the mortgagee on notice of

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the basis for their claim that the foreclosure should have been stopped. The factual

allegations failed to state a claim for relief against the mortgagee, Citimortgage. The

complaint was dismissed. Griffin, 771-72.

Dismissal is particularly appropriate in the instant case in light of the holding in

Canadian National Railway, 94 So. 3d 1111, 1116 (Miss. 2012) cited in Chatham's brief

at page 7 supporting dismissal for lack of personal jurisdiction [Doc. #17], which held:

[A]bsent a sufficient allegation of particularized facts, judicial economy

requires that the corporate veil should not preliminarily pierced for long-arm

jurisdiction on the mere unsubstantiated allegation in the pleadings.

CONCLUSION

Since Plaintiffs' Complaint fails to put Defendant Chatham on notice of the basis

of any claim, the Complaint should be dismissed pursuant to Mississippi Rule of Civil

Procedure 12(b)(6). As a matter of law Plaintiffs completely fail to show why Chatham,

as owner of the Sun Herald newspaper, can ever be held liable for the alleged defamation

or false light invasion of privacy.

**RESPECTFULLY SUBMITTED** this the 14th day of October, 2021.

CHATHAM ASSET MANAGEMENT, LLC

By:

s/ Henry Laird

**HENRY LAIRD** 

**OF COUNSEL:** 

Henry Laird (MSB#1774)

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3

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Attorney for Plaintiffs

SO CERTIFIED, this the 14th day of October, 2021.

s/ Henry Laird HENRY LAIRD

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# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

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**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# ANSWER OF THE McCLATCHY COMPANY, LLC

COMES NOW Defendant The McClatchy Company, LLC and files this its Answer to the Complaint as follows:

## FIRST AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted.

#### SECOND AFFIRMATIVE DEFENSE

Plaintiffs are precluded from any recovery by virtue of the First Amendment to the United States Constitution guaranteeing freedom of speech and the press.

## THIRD AFFIRMATIVE DEFENSE

Plaintiffs are precluded from recovery by virtue of Mississippi Constitution Article III, § 13 guaranteeing the right to free speech and the press guaranteeing that free speech is a cherished right.

## FOURTH AFFIRMATIVE DEFENSE

Despite Defendant's good faith efforts, the classified advertisement was the result of a good faith mistake.

# FIFTH AFFIRMATIVE DEFENSE

Upon learning Plaintiffs' complaints, Defendant immediately published a correction concerning the mistaken identity.

## SIXTH AFFIRMATIVE DEFENSE

Section 95-1-5 Mississippi Code applies to this case.

#### SEVENTH AFFIRMATIVE DEFENSE

Defendant is free of any negligence in the publication of the classified advertisement at issue.

#### **EIGHTH AFFIRMATIVE DEFENSE**

The news story about which Plaintiffs complains involves an issue of public interest and concern requiring Plaintiffs to prove *New York Times v. Sullivan* malice by clear and convincing evidence, which as a matter of law, Plaintiffs cannot do.

#### NINETH AFFIRMATIVE DEFENSE

Plaintiffs are vortex public figures requiring them to prove *New York Times v.*Sullivan malice by clear and convincing evidence, which as a matter of law, Plaintiffs cannot do.

# **TENTH AFFIRMATIVE DEFENSE**

Plaintiffs are precluded from recovery by the Fair Comment Doctrine.

## **ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are precluded from recovery by the Neutral Reportage Doctrine.

## TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to punitive damages.

#### THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to presumed damages.

# **PARTIES**

- 1. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 1 of the Complaint and as a result deny them.
- 2. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 2 of the Complaint and as a result deny them.
- 3. Defendant denies the allegations contained in Paragraph 3 of the Complaint, except it admits it is a foreign limited liability company at the address alleged.
- 4. Defendant admits the allegations contained in Paragraph 4 of the Complaint.
- 5. Defendant denies the allegations contained in Paragraph 5 of the Complaint, except it admits Blake Kaplan resides in Jackson, County, Mississippi.
- 6. Defendant denies the allegations contained in Paragraph 6 of the Complaint.
- 7. Defendant denies the allegations contained in Paragraph 7 of the Complaint.

# JURISDICTION AND VENUE

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint.

9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.

- 10. Defendant denies the allegations contained in Paragraph 10 of the Complaint.
- 11. Defendant denies the allegations contained in Paragraph 11 of the Complaint.

# **FACTS**

- 12. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 13. Defendant denies the allegations contained in Paragraph 13 of the Complaint, except it admits the circulation of the *Sun Herald*.
- 14. Defendant admits the allegations contained in Paragraph 14 of the Complaint.
- 15. Defendant denies the allegations contained in Paragraph 15, but it admits the classified advertisement was published in print and digital format.
- 16. Defendant denies the allegations contained in Paragraph 16 of the Complaint.
- 17. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 17 and as a result denies them; but Defendant admits someone called about the advertisement on December 8, 2020.
- 18. Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph 18 and as a result denies them.

- 19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.
- 20. Defendant denies the allegations contained in Paragraph 20 of the Complaint, but it admits a retraction was published.
- 21. Defendant denies the allegations contained in Paragraph 21 of the Complaint.

## STATUTORY REQUIREMENTS

- 22. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 23. Defendant admits the allegations contained in Paragraph 23 of the Complaint.
- 24. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 24 of the Complaint and as a result, denies them.
- 25. Defendant denies the allegations contained in Paragraph 25 of the Complaint, except it admits they received the notice.
- 26. Defendant denies the allegations contained in Paragraph 26 of the Complaint.
- 27. Defendant admits the allegations contained in Paragraph 27 of the Complaint.
- 28. Defendant denies the allegations contained in Paragraph 28 of the Complaint.
- 29. Defendant denies the allegations contained in Paragraph 29 of the Complaint.

# APPLICABLE STANDARD

- 30. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 31. Defendant admits *Whitten v. Commercial Dispatch Pub. Co.*, 487 So. 2d 843, 844 (Miss. 1986) and *Staheli v. Smith*, 548 So. 2d 1299, 1304 (Miss. 1989) are reported decisions in Mississippi but deny the balance of the allegations.
- 32. Defendant denies the allegations contained in Paragraph 32 of the Complaint.
- 33. Defendant denies the allegations contained in Paragraph 33 of the Complaint.
- 34. Defendant denies the allegations contained in Paragraph 34 of the Complaint.
- 35. Defendant denies the allegations contained in Paragraph 35 of the Complaint.
- 36. Defendant denies the allegations contained in Paragraph 36 of the Complaint.
- 37. Defendant denies the allegations contained in Paragraph 37 of the Complaint.
- 38. Defendant denies the allegations contained in Paragraph 38 of the Complaint.
- 39. Defendant denies the allegations contained in Paragraph 39 of the Complaint.

40. Defendant denies the allegations contained in Paragraph 40 of the Complaint.

- 41. Defendant denies the allegations contained in Paragraph 41 of the Complaint.
- 42. Defendant denies the allegations contained in Paragraph 42 of the Complaint.

## **CAUSES OF ACTION**

## FIRST CAUSE OF ACTION: DEFAMATION

- 43. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 44. Defendant denies the allegations contained in Paragraph 44 of the Complaint.
- 45. Defendant denies the allegations contained in Paragraph 45 of the Complaint, but admit, among others, four of the elements of a defamation claim.
- 46. Defendant denies the allegations contained in Paragraph 46 of the Complaint, except Defendant admits the *Sun Herald* learned that the Health Department said it did not forward the advertisement to the newspaper; except Defendant is without sufficient knowledge to admit or deny the alleged telephone calls and as a result, denies them.
- 47. Defendant denies the allegations contained in Paragraph 47 of the Complaint.
- 48. Defendant denies the allegations contained in Paragraph 48 of the Complaint.

- 49. Defendant denies the allegations contained in Paragraph 49 of the Complaint.
- 50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.
- 51. Defendant denies the allegations contained in Paragraph 51 of the Complaint.
- 52. Defendant denies the allegations contained in Paragraph 52 of the Complaint.
- 53. Defendant denies the allegations contained in Paragraph 53 of the Complaint.
- 54. Defendant denies the allegations contained in Paragraph 54 of the Complaint.
- 55. Defendant denies the allegations contained in Paragraph 55 of the Complaint.
- 56. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 56 of the Complaint and as a result denies them.
- 57. Defendant denies the allegations contained in Paragraph 57 of the Complaint.
- 58. Defendant denies the allegations contained in Paragraph 58 of the Complaint.
- 59. Defendant denies the allegations contained in Paragraph 59 of the Complaint.

- 60. Defendant denies the allegations contained in Paragraph 60 of the Complaint.
- 61. Defendant denies the allegations contained in Paragraph 61 of the Complaint.
- 62. Defendant denies the allegations contained in Paragraph 62 of the Complaint.
- 63. Defendant denies the allegations contained in Paragraph 63 of the Complaint.
- 64. Defendant denies the allegations contained in Paragraph 64 of the Complaint.

# SECOND CAUSE OF ACTION: INVASION OF PRIVACY FALSE LIGHT

- 65. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 66. Defendant denies the allegations contained in Paragraph 66 of the Complaint.
- 67. Defendant admits the allegations contained in Paragraph 67 of the Complaint.
- 68. Defendant denies the allegations contained in Paragraph 68 of the Complaint.
- 69. Defendant denies the allegations contained in Paragraph 69 of the Complaint.
- 70. Defendant denies the allegations contained in Paragraph 70 of the Complaint.

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71. Defendant denies the allegations contained in Paragraph 71 of the

Complaint.

72. Defendant denies the allegations contained in Paragraph 72 of the

Complaint.

**DAMAGES** 

75. Defendant denies the allegations contained in Paragraph 75 of the

Complaint.

Defendant denies the allegations in the unnumbered ad damnum clause, denies

that the Plaintiffs are entitled to any relief for any amount whatsoever, and requests that

the Complaint be dismissed with prejudice at Plaintiffs' cost with attorney's fees to

Defendants.

RESPECTFULLY SUBMITTED this the 18th day of October, 2021.

THE McCLATCHY COMPANY, LLC

d/b/a/ SUN HERALD

By: s/ Henry Laird

HENRY LAIRD

OF COUNSEL:

Henry Laird (MSB#1774)
WISE CARTER CHILD & CARAWAY, P.A.
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Attorney for Plaintiffs

SO CERTIFIED, this the 18th day of October, 2021.

*s/ Henry Laird* HENRY LAIRD

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Filed: 10/22/2021 Case: 30Cl1:21-cv-00135-DH Document #: 24 Page 1 of 2

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND **CHARLES FOUNTAIN** 

**PLAINTIFFS** 

v.

CIVIL ACTION NO. 30Cl1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

#### NOTICE OF ENTRY OF APPEARANCE

PLEASE TAKE NOTICE, that Karmel L. Keeton of The Mitchell Firm, PLLC enters her appearance on behalf of Plaintiffs, Robert Lett, III and Charles Fountain, in the above-captioned action. Please note that Karmel L. Keeton's firm address is 1062 Highland Colony Parkway, Suite 150 Ridgeland, Mississippi 39157, and firm phone number (769) 300-0462.

RESPECTFULLY SUBMITTED, this the <u>22nd</u> day of <u>October</u> 2021.

**QUEWANDRA DANIEL** AND TATTIANA BELL

By:

/s/ Karmel L. Keeton

Karmel L. Keeton (MS Bar No. 106308) Jesse Mitchell, III (MS Bar No. 103020)

Attorneys for Plaintiff

OF COUNSEL:

THE MITCHELL FIRM, PLLC

1062 Highland Colony Parkway, Ste. 150 Ridgeland, MS 39157

Telephone: (769) 300-0462 Facsimile: (601) 510-1981

Email: jmitchell@tmflegal.com kkeeton@tmflegal.com

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# **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Keeton</u>, attorney for Plaintiffs, hereby certify that on this day, I electronically filed the foregoing *Notice of Entry of Appearance* with the Clerk of the Court using the MEC system, which sent notification of such filing to all counsel of record.

THIS, the 22nd day of October 2021.

By: /s/ Karmel L. Keeton

Karmel L. Keeton (MS Bar No. 106308)

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# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

## DEFENDANT CHATHAM ASSET MANAGEMENT, LLC's NOTICE OF SERVICE

COME NOW Defendant, Chatham Asset Management, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant, Chatham Asset Management, LLC's Answers to Plaintiffs' First Set of Interrogatories; and
- 2. Defendant, Chatham Asset Management, LLC's, Responses to Plaintiffs' First Set of Request for Requests for Production of Documents.

Respectfully submitted, this the 27th day of October, 2021.

CHATHAM ASSET MANAGEMENT, LLC Defendant

BY: s/ Henry Laird HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <a href="https://hillographics.org/hillographics.nc">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

## **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 27th day of October, 2021.

s/ Henry Laird \_\_\_\_\_\_

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, MS 39501

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

## **DEFENDANT BLAKE KAPLAN'S NOTICE OF SERVICE**

COME NOW Defendant, Blake Kaplan, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- Defendant, Blake Kaplan's, Answers to Plaintiffs' First Set of Interrogatories; and
- 2. Defendant, Blake Kaplan's, Responses to Plaintiffs' First Set of Request for Requests for Production of Documents.

Respectfully submitted, this the 29th day of October, 2021.

BLAKE KAPLAN Defendant

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>
Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125
Gulfport, MS 39501

## **CERTIFICATE OF SERVICE**

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Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 29th day of October, 2021.

s/	Henry	Laird
	_	

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125 Gulfport, MS 39501

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# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# MOTION OF DEFENDANT THE McCLATCHY COMPANY, LLC FOR ADDITIONAL TIME TO RESPOND TO DISCOVERY

COMES NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and files this its motion for fourteen (14) days additional time in which to answer interrogatories and respond to requests for production of documents from Plaintiffs. These discovery responses are due November 1, 2021, but Defendant needs an additional fourteen (14) days' time to respond as fully and accurately as possible.

Employees of The McClatchy Company, LLC are in multiple locations, and in some cases, individuals with information to make the responses are no longer with Defendant, causing Defendant to find the information necessary to make the responses from different sources.

Defendant now requests the Court until November 15, 2021 to make those discovery responses.

# Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 138 of 387

Respectfully submitted, this the 29th day of October, 2021.

THE McCLATCHY COMPANY, LLC Defendant

BY: <u>s/ Henry Laird</u> HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, MS 39501

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 139 of 387

## **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 29th day of October, 2021.

s/ Henry Laird

Henry Laird (MSB No. 1774)
Email: <a href="https://hittps

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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

# PLAINTIFFS' RULE 41 STIPULATION OF DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANT CHATHAM ASSET MANAGEMENT, LLC

COME NOW, Plaintiffs, Robert Lett, III and Charles Fountain, by and through their counsel of record, and pursuant to Rule 41(a)(1)(ii) of the Mississippi Rules of Civil Procedure and so stipulate with Defendant's counsel to dismiss all of Plaintiffs' claims in this action against Defendant, Chatham Asset Management, LLC, without prejudice. This action shall remain pending as to the remaining Defendants, The McClatchy Company, LLC d/b/a Sun Herald and Blake Kaplan. This Court, being advised of this dismissal by all counsel hereto, finds that this Stipulation is well taken and should be granted.

IT IS THEREFORE, ORDERED AND ADJUDGED that any and all claims asserted by Plaintiffs, Robert Lett, III and Charles Fountain, in this cause be and are hereby dismissed without prejudice as to Defendant, Chatham Asset Management, LLC, leaving all parties to bear their own respective costs.

SO ORDERED AND ADJUDGED this the	day of	2021
		,

HONORABLE DALE HARKEY
JACKSON COUNTY CIRCUIT JUDGE

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#### STIPULATED AND AGREED TO BY:

Jesse Mitchell, III (MS Bar No. 103020)

Karmel Keeton (MS Bar No. 106308)

The Mitchell Firm, PLLC

1062 Highland Colony Pkwy, Ste. 150

Ridgeland, MS 39157 Telephone: 769.300.0462 jmitchell@tmflegal.com kkeeton@tmflegal.com Attorneys for Plaintiffs Henry Laird (MS Bar No. 1774) Wise Carter Child & Salaway, P.A. 2150 14th Street, Ste. 1125

Gulfport, MS 39501 Telephone: 228.867.7141 hfl@wisecarter.com Attorney for Defendants

#### PREPARED AND PRESENTED BY:

Jesse Mitchell, III (MS Bar No. 103020) Karmel Keeton (MS Bar No. 106308) The Mitchell Firm, PLLC 1062 Highland Colony Pkwy, Ste. 150 Ridgeland, MS 39157 Telephone: 769.300.0462 jmitchell@tmflegal.com kkeeton@tmflegal.com Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 142 of 387

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12 CIVIL ACTION NO. 30CI1:21-cv-00135-DH

NOV 10 2021 D

**DEFENDANTS** 

RANDY CARNEY, CLERK

BY\_\_\_\_D.C.

PLAINTIFFS' RULE 41 STIPULATION OF DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANT CHATHAM ASSET MANAGEMENT, LLC

COME NOW, Plaintiffs, Robert Lett, III and Charles Fountain, by and through their counsel of record, and pursuant to Rule 41(a)(1)(ii) of the Mississippi Rules of Civil Procedure and so stipulate with Defendant's counsel to dismiss all of Plaintiffs' claims in this action against Defendant, Chatham Asset Management, LLC, without prejudice. This action shall remain pending as to the remaining Defendants, The McClatchy Company, LLC d/b/a Sun Herald and Blake Kaplan. This Court, being advised of this dismissal by all counsel hereto, finds that this Stipulation is well taken and should be granted.

IT IS THEREFORE, ORDERED AND ADJUDGED that any and all claims asserted by Plaintiffs, Robert Lett, III and Charles Fountain, in this cause be and are hereby dismissed without prejudice as to Defendant, Chatham Asset Management, LLC, leaving all parties to bear their own respective costs.

SO ORDERED AND ADJUDGED this the 4 day of 1

Ovember 2021.

HONORABLE DALE HARKEY UJACKSON COUNTY CIRCUIT JUDGE

## STIPULATED AND AGREED TO BY:

Jesse Mitchell, III (MS Bar No. 103020)

Karmel Keeton (MS Bar No. 106308)

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Attorneys for Plaintiffs

# PREPARED AND PRESENTED BY:

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Attorney for Defendants

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IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

v.

**PLAINTIFFS** 

CIVIL ACTION NO. 30C11:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT BLAKE KAPLAN'S MISSISSIPPI RULE OF CIVIL PROCEDURE 12(b)(6) MOTION TO DISMISS

COME NOW Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, by and through their counsel of record and file this their Response in Opposition to Defendant, Blake Kaplan's Mississippi Rule of Civil Procedure 12(b)(6) Motion to Dismiss, and in support would state to wit the following:

#### INTRODUCTION

This is a defamation case (or alternatively, an invasion of privacy false light case) arising out of a libelous advertisement (the "Advertisement") imputing a loathsome disease to Plaintiffs. As a result of the Advertisement's publication, Plaintiffs' lives, their marriages, and children have been severely affected by the "Scarlet Letters" forever attached to their names. This blatantly false Advertisement was published in print and online in the *Sun Herald* newspaper, on December 8, 2020, and again on December 9, 2020. The Advertisement was published by Defendant newspaper company, The McClatchy Company, LLC d/b/a Sun Herald ("McClatchy"), for which Defendant, Blake Kaplan ("Kaplan"), serves as Executive Editor and General Manager. Kaplan moves this Court to dismiss Plaintiffs' Complaint for alleged failure to state a claim, arguing that Plaintiffs failed "to put

Defendant Blake Kaplan on notice of the basis of any claim [...]" However, Plaintiffs' Complaint more than sufficiently pleads their claims against Kaplan for libel per se (or alternatively invasion of privacy false light) and negligence due to lack of supervision/management, failure to employ good journalistic practices, failure to follow internal policies and procedures, failure to employ processes of review and safeguard, failure to edit and fact check, and an overall failure to prevent the Advertisement's publication. Accordingly, Defendant, Blake Kaplan's motion should be denied.

#### LEGAL STANDARD

Generally, Mississippi is a notice pleading state. A plaintiff, therefore, is only required to set out, "a short and plain statement of the claim showing that [he/she] is entitled to relief [....]"<sup>2</sup> Further, documents incorporated by reference or attached as exhibits are considered to be a part of the pleadings for all purposes.<sup>3</sup> When considering a motion to dismiss for failure to state a claim, a court must accept as true the well-pleaded factual allegations in the complaint and draw all reasonable inferences in favor of the plaintiff.<sup>4</sup> Therefore, a complaint should not be dismissed for failure to state a claim "unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of the claim."<sup>5</sup>

#### **ARGUMENT**

1. Plaintiffs' claims are sufficiently stated to provide Defendant, Blake Kaplan with notice.

Plaintiffs' Complaint places Kaplan on notice through sufficient claims that entitle Plaintiffs to relief. On August 9, 2021, Plaintiffs filed their Complaint alleging libel per se (or alternatively invasion of privacy false light) and negligence on the part of Defendants, Chatham Asset Management,

<sup>&</sup>lt;sup>1</sup> Brief of Def. Blake Kaplan in Support of Miss. R. Civ. P. 12(b)(6) Motion to Dismiss 3, MEC No. 21.

<sup>&</sup>lt;sup>2</sup> Miss. R. Civ. P. 8(a)(1).

<sup>3</sup> See Miss. R. Civ. P. 10(c).

<sup>4</sup> See Ashcroft v. Ighal, 556 U.S. 662, 678-79 (2009).

<sup>&</sup>lt;sup>5</sup> City of Meridian v. \$104,960.00 United States Currency, 231 So. 3d 972, 974 (¶8) (Miss. 2017) (citations omitted).

LLC; The McClatchy Company, LLC d/b/a Sun Herald; and Blake Kaplan. Specifically, that Defendants' unprivileged publication of a false health notice attributing possible STDs/HIV to Plaintiffs constituted libel per se as the advertisement not only "imputed the existence of some contagious disease," but "tend[ed] to injure [their] reputation and thereby expose[d them] to public hatred, contempt, or ridicule, degrade[d them] in society, lessen[ed them] in public esteem or lower[ed them] in the confidence of the community[. . . .]" In fact, Plaintiffs' Complaint included a copy of the Advertisement originally published in the Sun Herald newspaper.

MSC Announcements

Health Multication
HEALTH DEPT, has been notified to contact 3 more alleged person(s) to be tested for STD/HIV doe to person(s) been reported of having contact with positive person(s)
REPORT TO NEARBY HEALTH DEPT www.msdhs.com; NEAL RAINEY 38 of PASCAGOULA, CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA, ROBERT LEE LETT 39 of MOSS POINT (NOTIFIED 12-7-2020), 601-576-7400 mshealindept@mail.com

The Advertisement was included in Exhibits B and C of the Complaint, and as an incorporated image in Exhibit E's Statutory Notice Requirement, which was originally served upon Defendant, Kaplan, on April 17, 2021, in compliance with Mississippi Code Section 95-1-5. Like the Complaint, the Statutory Notice Requirement also put Kaplan on notice of Plaintiffs' potential claims.

Plaintiffs further allege in their Complaint that Defendants "played a role in the publication of the libelous advertisement at issue [...], failed to prevent the Advertisement's publication, and/or are

<sup>&</sup>lt;sup>6</sup> Complaint 14 (¶63), MEC No. 2 (citing Phillips Brothers, L.P. v. Winstead, 129 So. 3d 906, 928 (¶76) (Miss. 2014)).

<sup>&</sup>lt;sup>7</sup> Complaint 14 (¶62), MEC No. 2 (citing Fulton, 498 So. 2d at 1217).

<sup>&</sup>lt;sup>8</sup> Id. at Ex. B, C, and E.

<sup>9</sup> Id. at Ex. E.

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generally liable to Plaintiffs as a result of the Advertisement's publication." As it relates to negligence,

Plaintiffs assert that,

Defendants owed Plaintiff[s] a duty of care to act with a reasonable level of care in publishing the Advertisement at issue. Defendants breached this duty when Defendants failed to act in a manner consistent with those in the journalism profession. Specifically, Defendants failed to research, fact check, or verify the obviously false information contained within the Advertisement. Defendants failed to verify the source of information, let alone the source's trustworthiness. Defendants failed to review the Advertisement and edit for any errors or falsities and/or Defendants' processes for review and safeguard failed or were not properly employed. Defendants further failed to supervise or manage the editing process. Overall Defendants failed to follow good journalistic practices, including internal policies and procedures. 10

Moreover, "Defendants invaded Plaintiffs' privacy by [. . .] negligently publicizing statements about Plaintiff[s] which were highly offensive to a reasonable person, and which Defendants knew or should

have known to be false."11

Under Rule 8(a) of the Mississippi Rules of Civil Procedure, a complaint need only "provide sufficient notice to the defendant of the claims and grounds upon which relief is sought." Plaintiffs have done so here. Plaintiffs are not required, however, to recite all the underlying facts entitling them to relief. In their Complaint, Plaintiffs assert several means of negligence, all of which boil down to Defendant Kaplan's failure to act accordingly with the journalism profession, company policies and procedures, and within the scope of his position as a supervisor/manager resulting in the Advertisement's publication. As such, a more definite statement pleading specific evidentiary details is not necessary, especially when Plaintiffs' Complaint is intelligible and provides sufficient notice. If or it is through liberal discovery and summary judgment motions that disputed facts will become

<sup>10</sup> Id. at 13 (¶58).

<sup>11</sup> Complaint 14 (¶66), MEC No. 2.

<sup>&</sup>lt;sup>12</sup> Miss. R. Civ. P. 8 Advisory Comm. Notes (citing DynaSteel Corp. v. Aztec Industries, Inc. 611 So. 2d 977 (Miss. 1992)).

<sup>13</sup> See Crove v. Crove, 641 So. 2d 1100, 1104 (Miss. 1994) (citing Miss. R. Civ. P. 8 Comment).

<sup>14</sup> See Miss. R. Civ. P. 12 Advisory Comm. Notes.

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defined and unmeritorious claims disposed of.<sup>15</sup> Thus, with Plaintiffs' short and plain statements,

Plaintiffs have sufficiently plead their claims and have put all Defendants on notice, including Kaplan.

2. Based on Plaintiffs' statements, this Court could find that facts exist against

Defendant, Blake Kaplan, entitling Plaintiffs to relief.

Given Kaplan's position within the company, this Court could easily find that Kaplan's actions

or inactions played a direct role in the publication of the Advertisement, entitling Plaintiffs to relief.

On October 11, 2021, Defendant, Blake Kaplan, filed his Affidavit with this Court. 16 Within this

Affidavit, Kaplan states that he serves as Regional Executive Editor for Defendant, McClatchy, and

as General Manager for the Sun Herald.<sup>17</sup> Despite serving within these executive and managerial roles,

Kaplan alleges that his "responsibilities are primarily news-related." Kaplan further asserts that he

has "no responsibility for the paper's advertising department or its revenues," and has "no day-to-

day knowledge of what content appears in the classified advertising section of the Sun Herald

newspaper since the advertising is processed either electronically or by remote workers outside

Mississippi."20

In opposition, Plaintiffs argue that as Regional Executive Editor for McClatchy, and General

Manager for the Sun Herald, Kaplan is within the company hierarchy, if not at the top of the structure,

to implement and enforce company policies and procedures, to include processes for review and

safeguard, and to train, supervise, and manage employees within relevant departments. Clearly, the

Advertisement is blatantly false and fake on its face, however, Kaplan, nor anyone under his

supervision as the Regional Executive Editor and General Manager, took the time to prevent let alone

review the Advertisement before publishing it – twice.

15 See Conley v. Gibson, 355 U.S. 41, 47-48 (1957).

16 Affidavit of Blake Kaplan, MEC No. 18.

17 Id. at 1 (¶3).

18 Affidavit of Blake Kaplan 1 (¶4), MEC No. 18.

19 Id. at 2 (¶4).

20 Id. at 2 (¶7).

Based on Kaplan's assertions, no general manager or executive would ever be held responsible for their managerial or executive actions or inactions within a company as they were not in "direct" control. This simply cannot be the case. Processes and policies must be in place, and employees must be trained and supervised to act in accordance with company processes and policies and overall good journalistic practices. Kaplan's position places him uniquely within such authority to regulate processes, policies, and people, regardless of his proximity or control over a specific issue.

Kaplan is not a mere employee with zero involvement, as he would have the Court believe. No. Rather, as Kaplan states in his affidavit, he is responsible for "plan[ning] and strategiz[ing news] stories [...,] edit[ing news] stories for fairness, spelling, grammar, truthfulness and libel [...,] tak[ing] calls from customers [...,] represent[ing] each market in company meetings [...,] represent[ing] the paper at public events, [and] tak[ing] calls as an official representative of the paper [...],"21 among other listed responsibilities. However, this brief, seven sentence description of Kaplan's duties and responsibilities as Regional Executive Editor of McClatchy and General Manager of the Sum Herald is and in no way can be exhaustive. Therefore, additional discovery into Kaplan's duties and responsibilities is required to negate his involvement given the definitions of his titles. As defined by Webster's Dictionary, an "executive" is "one who holds a position of administrative or managerial responsibility in a business or other organization." Meanwhile, Black Law's Dictionary defines a "manager" as "[a] person who administers or supervises the affairs of a business, office, or other organization. More specifically, a general manager is "[a] manager who has overall control of a nosiness, office, or other organization, including authority over other managers." Thus, Kaplan's

<sup>&</sup>lt;sup>21</sup> Affidavit of Blake Kaplan 1-2 (¶4), MEC No. 18 (emphasis added).

<sup>22</sup> Webster's Third New Int'l Dictionary 794 (1993).

<sup>23</sup> Black's Law Dictionary 979 (8th ed. 2004).

<sup>24</sup> Id.

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executive, supervisory, and managerial roles need to be further explored, and will likely prove Kaplan's negligence.

From the limited discovery that was conducted however, Kaplan states that he "request[ed] assistance [from Tony Berg and Dan Morgenstern] to find out how the ad was placed[, . . . discussed] print related issues concerning the ad [with Sarah Patterson and Kerry Bean, . . . and told his] boss, Robyn Tomlin, [. . .] what happened [to] loop her into things."<sup>25</sup> What is important to note is that each person listed above is a member of management. So, just as Kaplan was able to message and converse with other members of management after the Advertisement's publication, he could have conversed with, messaged, trained, supervised, and managed other members of management in the relevant departments to adhere to company policies and procedures, to stay abreast of issues, and to employ and enforce the necessary safeguards prior to the Advertisement's publication to avoid what occurred in this case.

Further, Kaplan produced a voicemail from Plaintiff, Robert Lett, III, in which Mr. Lett puts both Kaplan and the *Sun Herald* on notice of the defamatory advertisement on the first date of publication, December 8, 2020.<sup>27</sup> Kaplan also "received a communication from reporter Anita Lee [. . .] asking about the origin of the ad."<sup>28</sup> Yet, despite being made personally aware of the defamatory advertisement on the afternoon of December 8, 2020, through several means, and swearing to as much in interrogatories, Kaplan as the official representative of the *Sun Herald* and within his executive and managerial roles, failed to stop the Advertisement's re-print in a separate publication on December 9,

<sup>&</sup>lt;sup>25</sup> See Exhibit "A" - Def. Blake Kaplan's Answers to Pls' 1st Set of Interrogs., 3-4 Interrog. No. 6.

<sup>&</sup>lt;sup>26</sup> Based on their LinkedIn profiles and McClatchy's website, Tony Berg is McClatchy's Senior Vice President of Advertising; Dan Morgenstern was McClatchy's East Region Sales Director at the time of the subject incident; Sarah Patterson is the Director of Production at McClatchy; Kerry Bean is McClatchy's Senior Director of News Publishing; and Robyn Tomlin now the McClatchy Vice President of Local News was a President and Editor at News & Observer/Herald-Sun and McClatchy's Southeast Regional Editor at the time of the subject incident.

<sup>&</sup>lt;sup>27</sup> See Exhibit "B.1" - Def. Blake Kaplan's Resp. to Pls' 1st Set of Req. for Produc. of Docs., 2 Req. No. 4. See also Exhibit "B.2" - Tr. of Req. No. 4. Note: A copy of the voicemail audio has been mailed to the Court Clerk on a jump drive for conventional filing.

<sup>28</sup> See Ex. A at 1-2 Interrog. No. 2.

2020. In his affidavit, Kaplan claims he "knew nothing about the classified ad which is the subject of this litigation until after it was published and had no responsibility for accepting or publishing the classified ad which is the subject of this litigation."<sup>29</sup> To claim zero involvement, while being aware and maintaining the authority to address the situation as the official representative of the newspaper raises reasonable doubt to say the least.

Kaplan's position coupled with the discovery currently conducted presents reasonable facts beyond doubt that substantiate Plaintiffs' claims and entitle them to relief. Had Kaplan not neglected his duties and responsibilities as Regional Executive Editor of McClatchy and General Manager of the Sun Herald, and enforced or implemented company policies, processes, and procedures, and trained and managed people or departments to review advertisements for libel and trustworthiness prior to their dissemination to millions of viewers, a situation like this would not have happened. Kaplan not only failed to enforce or implement safeguards and company policies, processes, and procedures, but he failed to properly train, supervise, and/or manage relevant employees or departments, and prevent or mitigate the Advertisement's publication despite knowledge of its defamatory nature. Kaplan's actions and inactions resulted in Plaintiffs' damages, for which Plaintiffs are entitled to sue. Plaintiffs have properly asserted these claims in their Complaint, as previously addressed, therefore Defendant, Blake Kaplan's motion to dismiss should fail.

#### CONCLUSION

In conclusion, Plaintiffs' Complaint fully complies with the pleading requirements of Rule 8 of the Mississippi Rules of Civil Procedure and provides Defendant Kaplan with fair notice of the charges against him and the grounds therefor. Moreover, the discovery conducted thus far provides this Court with plausible evidence of Kaplan's wrongdoing, and additional discovery and argument

<sup>&</sup>lt;sup>29</sup> Affidavit of Blake Kaplan 3 (¶9), MEC No. 18.

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will add further detail as the case progresses. Accordingly, for the reasons set forth herein, Plaintiffs respectfully requests this Court deny Defendant's 12(b)(6) Motion to Dismiss.

RESPECTFULLY SUBMITTED, this the 11th day of November 2021.

# ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

By: /s/ Karmel L. Keeton

Karmel LeDonia Keeton (MSB No. 106308)

Jesse Mitchell, III (MSB No. 103020)

Attorneys for Plaintiffs

## OF COUNSEL:

The Mitchell Firm, PLLC 1062 Highland Colony Pkwy, Ste. 150 Ridgeland, Mississippi 39157

Telephone: 769.300.0462 Facsimile: 601.510.1981

Email: jmitchell@tmflegal.com kkeeton@tmflegal.com

legalassistant@tmflegal.com

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 153 of 387

# **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Keeton</u> hereby certify, that on <u>November 11, 2021</u>, I electronically filed the foregoing with the Clerk of Court using the ECF/MEC system which will send notification of such filing to all counsel of record.

# RESPECTFULLY SUBMITTED,

By: /s/Karmel L. Keeton

Karmel LeDonia Keeton (MSB No. 106308)

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 154 of 387

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# DEFENDANT BLAKE KAPLAN'S ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES

COMES NOW Defendant, Blake Kaplan, and answers Plaintiffs' First Set of Interrogatories as follows:

INTERROGATORY NO. 1: Please provide your full name, social security number, current address, current employer and job title, and any and all telephone numbers (including but not limited to mobile telephones).

ANSWER: Blake Kaplan

c/o The McClatchy Company, LLC

1601 Alhambra Blvd., Suite 100, Sacramento, CA 95816

Employer: The McClatchy Company, LLC

Job title: Regional Executive Editor and Sun Herald General

Manager

601-909-0637

INTERROGATIORY NO. 22 Please identify when and how you learned about the subject Advertisement at issue finithis cause of actions Please findlude the date and the person or medium that communicated the information to your your location when you learned of its and the method (telephone call, text message, emails face to face, written) of the communication.

December 8, 2020 I received a communication from reporter Anita; Lee who had received communications from Liz Sharlot, Director, Office of Communications, for the MississippinDepartment of Health; asking about the origin of the ad-Ms; Sharlot told Ms. The the department had received questions about the ad-At-the time of all this communication; I was at my home in Gautier-Mississippi.

INTERROGATORY NO.3: Please identify the company(ies), entity(ies), or person(s) responsible for making decisions concerning the solicitation, editing, and publication process(es) for advertisements at The McClatchy Company, LLC d/b/a Sun Herald ("McClatchy"), from November 2020 to present.

ANSWER: Tony Gray is the manager of general classifieds, and he works with Shannon Hayden, who manages an advertising call center in Texas.

These are the people who handle classified ads.

INTERROGATORY NO. 4: Please cite your role, duties, responsibility(ies), and authority for any and all decisions concerning the solicitation, editing, and publication process(es) for advertisements at McClatchy, from November 2020 to present.

ANSWER: I have no role in the solicitation, editing, and publication process(es) for advertisements at McClatchy from November 2020 to present.

INTERROGATORY NO. 5: Describe any educational or work-related coursework, degrees, certifications, licenses, and/or training you have received as it relates to newspapers, advertisements, journalism, and the solicitation, editing, and publication process of newspapers and advertisements, and include in your response:

(a) The title and/or description of said coursework, degree, certification, license, and/or training;

- (b) The authority who administered or granted said coursework, degree, certification, license, and/or training; and
  - (c) The date conferred or completed.

LSU in 1988. I have attended management training at the Poynter Institute in Florida in 1996 and 2001. I have a completed a Kiplinger Fellowship at Ohio State University in 2015. I am a graduate of the Local Media Association's fundraising cohort in 2020. In 2018, I attended and graduated from "Blueprint," a McClatchy-sponsored training program in Dallas, Texas, on how to sell advertising, though classified ads were not a specific part of the program.

INTERROGATORY NO.6: Identify and describe all communications and/orsequences you have had with any McClatchy agent, servant, employee, etc. or with any other company, entity, or person(s) (including Plaintiffs) regardings (1) Plaintiffs, Charles Lamont Fountain and Robert Lee Lett, III, and (2) the subject matter of this litigation.

Please include in your response:

- (a) The date(s) of each communication or meeting
- (b) The method(s) of communication;)
- (c) The identity of the company, entity, or person(s) who received or sent the communication;
  - (d) The identity of the individuals present at each meeting;

(and (e) The substance of the communication or discussion at each meeting

## Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 157 of 387

ANSWER: Upon learning of the ad on December 8, 2020, I sent email messages to Tony Berg and Dan Morgenstern requesting assistance to find out how the ad was placed. They began looking into it. I had a telephone conversation with Mr. Berg on December 9 where he explained to me he found that the ad came in via a computer portal and that fake credentials may have been used. Mr. Morgenstern sent an email with similar information. I had conversations with Sarah Patterson and Kerry Bean about print related issues concerning the ad. Sometime that same week, I had a telephone conversation with my boss, Robyn Tomlin, to tell her what happened and loop for into things.

I object to furnishing any information covered by the attorney-client privilege and work product of counsel.

Respectfully submitted, this the <u>L</u>

\_day of October, 2021.

**BLAKE KAPLAN** 

As/to Objections:

Henry Laird

Email: hfl@wisecarter.com

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

## STATE OF

### **COUNTY OF**

Personally appeared before me, the undersigned authority in and for the County and State aforesaid, on this the 29th day of October, 2021, within my jurisdiction, the within named BLAKE KAPLAN who upon oath, states that the matters and facts set forth above in the above and foregoing answers to interrogatories are true and correct as therein state, and where stated on information and belief, he verily believes the same to be true.

3y: 七<u>夕</u>

Blake Kaplan

SWORN TO AND SUBSCRIBED BEFORE ME, this the 29th day of October,

2021.

My Commission Expires:

A/SON COUNT

NOTARY PUBLIC 1D No. 46491 Commission Expires

### CERTIFICATE OF SERVICE

I, Henry Laird, do hereby certify that I have sent a true and correct copy of the foregoing by regular U.S. Mail and Email:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal..com

Attorney for Plaintiffs

This the \_\_\_\_\_day of October, 2021.

Henry Laird

Henry Laird (MSB No. 1774) Email: hfl@wisecarter.com Wise Carter Child & Caraway, P.A.

2510 14<sup>h</sup> Street, Suite 1125

Gulfport, MS 39501

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# DEFENDANT BLAKE KAPLAN'S RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS PRODUCTION OF DOCUMENTS

COMES NOW Defendant, Blake Kaplan, and responds to Plaintiffs' First Set of Requests for Production of Documents as follows:

REQUEST NO. 1: Please produce a copy of the Advertisement for each publication issued, by date and medium (McClatchy Interrog. No. 5.)

RESPONSE:

Please see Attachment No. 1.

REQUEST NO. 2: Please produce a copy of any written memorandum or order submitted in the publication request for the Advertisement. (McClatchy Interrog. No. 9.)

RESPONSE: Please refer to responses from Defendant, The McClatchy Company, LLC.

REQUEST NO. 3: Please produce a copy of the rules, guidelines, procedures, and/or terms and conditions in effect and used during the period of January 1, 2020 through December 31, 2020 for McClatchy's online Classified Self-Service Site.

RESPONSE:

Please refer to responses from Defendant, The McClatchy

Company, LLC.



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(REQUESTING: 4: Please produce a copy of any written (including digital) or oral

((if recorded) response or comment provided to you by any person or entity, to include but)

দিবা limited to Plaintiff and the public at large (McGlatchy/Interrog No. এচ ও এন)

(RESPONSE: Please see audio recordings in Affachment No. 4)

REQUEST NO. 5: Please produce all documents and/or communications (including written memorandum, electronic mail, facsimile, recorded oral communication, text message, etc.) related to any meeting or communication held to discuss the Advertisement or publication thereof. Note: In requesting this documentation, Plaintiffs only seek information kept in the regular course of business, and not in anticipate of litigation or for the purposes of legal consultation. (Chatham Interrog. No. 5; McClatchy

**RESPONSE:** I have no such documents.

Interrog. 17; and Kaplan Interrog. No. 6.)

REQUEST NO. 6: Please provide a copy of the written and signed job descriptions, duties, and/or responsibilities for advertising department employees (including but not limited to general employees, directors, managers, supervisors, etc.) and editors (including but not limited to the Executive Editor, Managing Editor, (Chief) Copy Editor, etc.). Specifically, as it relates to this request, please provide the written and signed job description, duties, and/or responsibilities for Blake Kaplan. (Kaplan Interrog. No. 4.)

**RESPONSE:** Production will not be allowed because the request is overly broad and burdensome and not calculated to lead to discovery of admissible evidence except this Defendant has no such documents.

REQUEST NO. 7: Please produce all employee manuals, handbooks, training

materials, and required rules or procedures for advertising department employees

(including but not limited to general employees, directors, managers, supervisors, etc.)

and editors (including but not limited to the Executive Editor, Managing Editor, (Chief)

Copy Editor, etc.), in effect and used during the period of January 1, 2020 through

December 31, 2020.

RESPONSE:

I have no such documents.

REQUEST NO. 8: Please produce declaration pages for any insurance

agreements, including excess polices, umbrella policies, self-insurance arrangements, or

any other policy owned or application to you that may satisfy part or all of any judgment

which may be entered against you or to reimburse you for payments made to satisfy such

a judgment.

**RESPONSE:** 

Please refer to responses from Defendant, The McClatchy

Company, LLC.

**REQUEST NO. 9:** At is relates to each expert witness you expect to call at trial,

please produce a copy of his/her:

(a) Written report;

(b) The exhibits utilized in summarization or support of his/her opinions; and

(c) Current resume and/or curriculum vitae.

(McClatchy Interrog. No. 22.)

RESPONSE:

I have no such documents.

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**REQUEST NO. 10:** For all interrogatory responses not specifically identified above, please provide any and all documents and communications identified or referred to in your responses to Plaintiff's First Set of Interrogatories.

**RESPONSE:** 

I have no such documents.

Henry Laird

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Email: hfl@wisecarter.com Telephone: 228/867-7141 Facsimile: 228/867-7142

As to Objections:

Henry Laird

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Telephone: 228/867-7141

### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have sent a true and correct copy of the foregoing by regular U.S. Mail and Email:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 39 day of October, 2021.

Henry Laird

Henry Laird (MSB No. 1774) Email: hfl@wisecarter.com

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

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### TRANSCRIPTION OF REQUEST NO. 4

"Yes sir, my name is Robert Lett. My number is (228) 249-4963. I'm calling because there was an ad put up in the Classified . . . falsely, like it was from thhhe-- Department of Health. From the State of Mississippi. Stating that I needed to be tested for HIV. Along with two other gentlemen. Annud-- I called the State Department, and it's not true. And I was trying to call and see how it was allowed to be posted. Against HIPAA laws and everything when it's not the truth? So, could you please give me a call back? As soon as you can? Thank yah."

Transcribed this the 11th day of November 2021, by:

Karmel LeDonia Keeton (MSB No. 106308)



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## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

v.

**PLAINTIFFS** 

CIVIL ACTION NO. 30Cl1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

#### **NOTICE OF SERVICE**

**NOTICE** is hereby given that Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain have this day served the following:

Plaintiffs' Second Set of Requests for Production of Documents to Defendant, The McClatchy Company, LLC D/B/A Sun Herald.

The undersigned retains the original of the above pleading as custodian thereof.

RESPECTFULLY SUBMITTED, this the 29th day of November 2021.

ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

/s/ Karmel L. Keeton

Karmel L. Keeton (MS Bar No. 106308) Jesse Mitchell, III (MS Bar No. 103020) Attorneys for Plaintiffs

#### OF COUNSEL:

The Mitchell Firm, PLLC 1062 Highland Colony Parkway, Ste. 150 Ridgeland, Mississippi 39157 Telephone: 769.300.0462 Facsimile: 601.510.1981 Email: jmitchell@tmflegal.com

kkeeton@tmflegal.com

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 167 of 387

## **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Keeton</u>, attorney for Plaintiffs, do hereby certify that a true and correct copy of the foregoing pleadings have been sent to the following:

Henry Laird Wise Carter Child & Caraway, P.A. 2510 14th Street, Ste. 1125 Gulfport, Mississippi 39501 Telephone: 228.867.7141

Facsimile: 228.867.7142 Email: hfl@wisecarter.com

THIS, the 29th day of November 2021

BY: /s/ Karmel L. Keeton
Karmel L. Keeton

### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

## DEFENDANT, THE McCLATCHY COMPANY, LLC'S NOTICE OF SERVICE

COME NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant, The McClatchy Company, LLC's, First Set of Interrogatories Propounded to Plaintiff, Robert Lett, III;
- 2. Defendant, The McClatchy Company, LLC's, First Set of Requests for Production of Documents Propounded to Plaintiff, Robert Lett, III;
- 3. Defendant, The McClatchy Company, LLC's, First Set of Request for Admissions Propounded to Plaintiff, Robert Lett, III;
- 4. Defendant, The McClatchy Company, LLC's, First Set of Interrogatories Propounded to Plaintiff, Charles Fountain;
- 5. Defendant, The McClatchy Company, LLC's, First Set of Requests for Production of Documents Propounded to Plaintiff, Charles Fountain; and
- 6. Defendant, The McClatchy Company, LLC's, First Set of Request for Admissions Propounded to Plaintiff, Charles Fountain.

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 169 of 387

Respectfully submitted, this the 29th day of December, 2021.

THE McCLATCHY COMPANY, LLC Defendant

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Case: 30Cl1:21-cv-00135-DH Document #: 32 Filed: 12/29/2021 Page 3 of 3

### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 29th day of December, 2021.

s/	Henry	Laird	

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125 Gulfport, MS 39501

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

## DEFENDANT, THE McCLATCHY COMPANY, LLC'S NOTICE OF SERVICE

COME NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant, The McClatchy Company, LLC's, Responses to Plaintiff, Robert Lett, III's, Second Set of Requests for Production; and
- 2. Defendant, The McClatchy Company, LLC's, Responses to Plaintiff, Charles Fountain's, Second Set of Requests for Production.

Respectfully submitted, this the 24th day of January, 2022.

THE McCLATCHY COMPANY, LLC Defendant

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>

Wise Carter Child & Caraway, P.A.

2510 14<sup>th</sup> Street, Suite 1125

Gulfport, MS 39501

## **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 24th day of January, 2022.

s/	Henry	Laird	

Henry Laird (MSB No. 1774) Email: <a href="https://https://html.ncb.nlm.ncb.nl

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 173 of 387

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

### DEFENDANT, THE McCLATCHY COMPANY, LLC'S NOTICE OF SERVICE

COME NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant, The McClatchy Company, LLC's, First Supplemental Interrogatory Propounded to Plaintiff, Robert Lett, III; and
- 2. Defendant, The McClatchy Company, LLC's, First Supplemental Interrogatory Propounded to Plaintiff, Charles Fountain.

Respectfully submitted, this the 24th day of January, 2022.

THE McCLATCHY COMPANY, LLC Defendant

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <u>hfl@wisecarter.com</u>

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501 Telephone: 228/867-7141

Facsimile: 228/867-7142

# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 24th day of January, 2022.

s/ Henry Laird

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, MS 39501

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 175 of 387

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

**CIVIL ACTION NO. 21-135(3)** 

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

#### NOTICE OF SERVICE

**NOTICE** is hereby given that Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain have this day served the following documents upon opposing counsel via first class mail and electronic correspondence:

- 1. Plaintiff, Robert Lett's, Responses to Defendant, The McClatchy Company, LLC's, First Set of Requests for Admissions; and
- 2. Plaintiff, Charles Fountain's, Responses to Defendant, The McClatchy Company, LLC's, First Set of Requests for Admissions;

RESPECTFULLY SUBMITTED, this the 28th day of January 2022.

ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

BY: /s/ Karmel LeDonia Keeton

Jesse Mitchell, III (MS Bar No. 103020) Karmel LeDonia Keeton (MS Bar No. 106308) Attorneys for Plaintiff Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 176 of 387

### OF COUNSEL:

The Mitchell Firm, PLLC 1062 Highland Colony Parkway, Ste. 150 Ridgeland, Mississippi 39157

Telephone: 769.300.0462 Facsimile: 601.510.1981

Email: jmitchell@tmflegal.com

kkeeton@tmflegal.com legalassistant@tmflegal.com

#### **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Keeton</u>, attorney for Plaintiffs, hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notice of said filing to the following:

Henry Laird Wise Carter Child & Caraway, P.A. 2510 14th Street, Ste. 1125 Gulfport, Mississippi 39501 Telephone: 228.867.7141

Facsimile: 228.867.7142 Email: hfl@wisecarter.com

THIS, the 28th day of January 2022.

/s/ Karmel LeDonia Keeton

Karmel LeDonia Keeton (MS Bar No. 106308)

Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 177 of 387

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

 $\mathbf{v}.$ 

**CIVIL ACTION NO: 21-135** 

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

#### PLAINTIFFS' MOTION FOR SEVERANCE OF CLAIMS

COME NOW, Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, and file this their Motion for Severance of Claims. In support of said Motion, Plaintiffs state to wit the following:

- 1. Plaintiffs filed their Complaint against Defendants, Chatham Asset Management, LLC; The McClatchy Company, LLC d/b/a Sun Herald; and Blake Kaplan, on August 9, 2021. MEC No. 2.
- 2. In their Complaint, Plaintiffs allege defamation (or in the alternative, invasion of privacy false light) as a result of Defendants' negligent publication of a libelous advertisement (the "Advertisement") imputing a loathsome disease to Plaintiffs, which was published both in print and online within in the Biloxi Sun Herald newspaper on December 8 and 9, 2020. Id.
- 3. As Plaintiffs' claims arise out of the same nucleus of operative fact and law, and Plaintiffs seek the same right to relief, for efficiency and economy purposes, Plaintiffs claims were jointly filed by means of permissive joinder.

#### 4. Generally,

[a]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction,

occurrence, or series of transactions or occurrences, and if any question of law or fact common to all these persons will arise in the action.

Miss. R. Civ. P. 20(a).

- 5. Although properly joined, due to recent events—namely, the incarceration of Fountain—Plaintiffs now seek to sever their case into two, separate and distinct actions.
- 6. When parties are improperly joined, the proper form of relief is severance. See Miss. R. Civ. P. 21. Nonetheless, severance may also be obtained in order to "prevent delay or prejudice" pursuant to Rule 20(b) of the Mississippi Rules of Civil Procedure. Miss. R. Civ. P. 20(b).

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Id. Moreover, the ordering of separate trials is also applicable under Rule 42(b) of the Mississippi Rules of Civil Procedure, which states that:

[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counter-claim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counter-claims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by Section 31 of the Mississippi Constitution of 1890.

Miss. R. Civ. P. 42(b).

- 7. On September 14, 2021, Fountain was sentenced to serve a concurrent term of eight years in the Mississippi Department of Corrections for two counts of Possession of Controlled Substance and one count of Marijuana Possession. See Exhibit "A"—Inmate Details. As such, Fountain's release is tentatively set for September 12, 2029. Id.
- 8. Prior to sentencing, Fountain worked at S.T. Engineer Halter Marine and Offshore as a painter and blaster.
- 9. Fountain's incarceration, while unrelated and irrelevant to Plaintiffs' claims against Defendants, unduly prejudices Lett due to no fault of his own, creating issues of expense, delay, and

bias, as well as the potential to confuse the issues and mislead the jury. In the interest of justice and judicial efficiency, therefore, Plaintiffs pray this Court sever this matter into two, separate and distinct actions.

- 10. Granting or denying severance lies within the trial court's broad discretion. See Wyeth-Ayerst Labs v. Caldwell, 905 So. 2d 1205, 1207 (¶ 6) (Miss. 2005). In making its determination, "the trial court "must weigh whether one trial or separate trials will best serve the convenience of the parties and court, avoid prejudice, and minimize expense and delay. The major consideration, of course, must be which procedure is more likely to result in a just, final disposition of the litigation." Capital City Ins. Co. v. G.B. "Boots" Smith Corp., 889 So. 2d 505, 509 (¶ 10) (Miss. 2004) (citing Miss. R. Civ. P. 42(b) cmt.).
- 11. At best, trying Plaintiffs' claims together will only assist with the production, timing, and cost of discovery that is within Defendants' possession. This discovery can easily be consolidated by the Court however, if deemed necessary. Access to discovery possessed by Fountain, including his ability to provide documentation and releases, be deposed, and to speak with experts, will likely be prolonged due to his incarceration, and may result in additional expenses for both counsel and client as it relates to communication, travel, documentation, etc. In this vein, judicial economy would not be best met through a single action.
- 12. More importantly however, Fountain's incarceration unduly prejudices Lett, not only through delay of discovery, and likely trial, but also through bias, which will likely confuse the issues and mislead the jury. As Plaintiffs' defamation claim involves their reputation within the community, Fountain's incarceration, while unrelated to Plaintiffs' claims against Defendants, has the likelihood to taint the jury against Lett. In order for justice to be best served, separation of Plaintiffs' case is warranted.

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13. Plaintiffs respectfully move this Court for an order severing their claims against Defendants on the grounds that the joining in one action and one complaint is individually prejudicial to Plaintiffs, injures their substantial rights, will cause embarrassment and undue expense, will confuse the issues and mislead the jury, and will delay trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Robert Lee Lett, III and Charles

Lamont Fountain, pray this Court separate their case into two, separate and distinct actions.

RESPECTFULLY SUBMITTED, this the 16th day of February 2022.

# ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

By:

/s/ Karmel L. Keeton

Karmel LeDonia Keeton (MSB No. 106308) Jesse Mitchell, III (MSB No. 103020) Attorneys for Plaintiffs

#### OF COUNSEL:

The Mitchell Firm, PLLC 1062 Highland Colony Pkwy, Ste. 150 Ridgeland, Mississippi 39157 Telephone: 769.300.0462 Facsimile: 601.510.1981

Email: jmitchell@tmflegal.com kkeeton@tmflegal.com

legalassistant@tmflegal.com

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# **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Keeton</u> hereby certify, that on <u>February 16, 2022</u>, I electronically filed the foregoing with the Clerk of Court using the ECF/MEC system which will send notification of such filing to all counsel of record.

RESPECTFULLY SUBMITTED,

By: /s/Karmel L. Keeton

Karmel LeDonia Keeton (MSB No. 106308)

Case: 30Cl1:21-cv-00135-DH

Document #: 36-1

Filed: 02/16/2022 Page 1 of 1
Contact Us (http://www.mdoc.ms.gov/Pages/Contact-Us.aspx)

Mississippi Department of Corrections

INMATE SEARCH

# **Inmate Details**

# **CHARLES FOUNTAIN**

MDOC ID Number: 236200

Race: BLACK	Sex: MALE	Date of Birth: 07/20/1978		
Height:	Weight:	Complexion:		
- Build:	Eye Golor:	Hair Color:		
Entry Date:	Location: SOUTH MISSISSIPPI COUNTY.	JAILUNIT: JACKSON CJ		
Location Change Date: 11/29/2021	Number of Sentences: 3	Total Length: 8 YEARS		
OFFENSE 1: POSSESSION OF CO	NTROLLED SUBSTANCE			
Sentence Length: 3 YEARS	County of Conviction: JACKSON	Sentence Date: 09/14/2021		
OFFENSE 2: POSSESSION OF CO	NTROLLED SUBSTANCE	and the second s		
Sentence Length: 8 YEARS		Sentence Date: 09/14/2021		
OFFENSE 3: MARIJUANA-POSSE	\$\$			
Sentence Length: 8 YEARS	County of Conviction: JACKSON	Sentence Date: 09/14/2021		
Tentative Release: 09/12/2029				



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# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# NOTICE OF FILING NOTICE OF REMOVAL

Defendants, The McClatchy Company, LLC and Blake Kaplan, file in this Court pursuant to 28 U.S.C. §§ 1332 and 1446, a copy of its Notice of Removal filed on February 24, 2022, in the United States District Court for the Southern District of Mississippi, Southern Division, thereby removing this action to federal district court. The Notice of Removal is attached as Exhibit "1" to this filing.

This the 24th day of February, 2022.

THE McCLATCHY COMPANY, LLC and BLAKE KAPLAN, Defendants

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Wise Carter Child & Caraway, P.A.

2510 14<sup>th</sup> Street, Suite 1125

Gulfport, MS 39501

Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Telephone: 228/867-7141 Facsimile: 228/867-7142 Case: 30Cl1:21-cv-00135-DH Document #: 37 Filed: 02/24/2022 Page 2 of 2

# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 24th day of February, 2022.

s/ Henry Laird

HENRY LAIRD (MSB 1774)
Wise Carter Child & Caraway, P.A.
2510 14th Street, Suite 1125
Gulfport, MS 39501

Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Telephone: 228/867-7141 Facsimile: 228/867-7142 

# IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN DIVISION

ROBERT LETT, III and CHARLES FOUNTAIN

٧.

FEB 24 2022

ARTHUR JOHNSTON
DEPUTY

PLAINTIFFS

CIVIL ACTION NO. 1: DACY 38 HSD-RHWR

THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION

Randy Carney Jackson County Circuit Court Clerk 3104 South Magnolia Street Pascagoula, MS 39567

JACKSON COUNTY, MISSISSIPPI CIRCUIT COURT CLERK

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

### ATTORNEYS FOR PLAINTIFFS

PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. §§ 1332 and 1446, Defendants, The McClatchy Company, LLC and Blake Kaplan, subject to all their defenses, including its Rule 12 defenses, hereby remove this action from the Circuit Court of Jackson County, Mississippi, to the United States District Court for the Southern District



of Mississippi, Southern Division. Removal of this case to federal court is appropriate because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and there is complete diversity of citizenship between Plaintiffs Robert Lett, III and Charles Fountain and Defendants The McClatchy Company, LLC and Blake Kaplan. As grounds for this removal, Defendants state as follows:

### I. FACTUAL AND PROCEDURAL BACKGROUND.

- 1. On August 9, 2021, Plaintiff filed their Complaint styled: Robert Lett, III and Charles Fountain v. Chatham Asset Management, LLC; The McClatchy Company, LLC d/b/a Sun Herald; Blake Kaplan; and John Does 1-12; in the Circuit Court of Jackson County, Mississippi; Cause No: 30Cl1:21-cv-00135-DH.
- 2. Attached hereto as Exhibit "A" is a certified copy of the documents that are in the state court file and record as of February 17, 2022.
- 3. Plaintiffs served Defendant The McClatchy Company, LLC ("McClatchy") with a summons and complaint ("Complaint") through its registered agent on August 18, 2021; served Defendant Blake Kaplan with a summons and complaint on August 23, 2021; and served Chatham Asset Management, LLC ("Chatham") through its registered agent with a summons and complaint on August 18, 2021.
- 4. The complaint filed in the state court [Doc. #2] seeks unspecified dollar amounts of damages for defamation and false light invasion of privacy for, among other damages, future psychiatric, psychological, and therapeutic expenses; injury to reputation and humiliation; mental anguish and suffering; and all damages allowed by state and federal defamation and invasion of privacy law.

<sup>1</sup> On November 9, 2021, the complaint filed against Defendant Chatham was dismissed [Doc. #29] leaving only McClatchy and Blake Kaplan as Defendants.

The complaint also seeks punitive damages and attorneys' fees, plus interest.

- 5. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place in which the removed actions has been pending, and because a substantial part of the events giving rise to Plaintiffs' putative claims allegedly occurred in this district.
- 6. As required by 28 U.S.C. § 1446(b)(3), this notice of removal is filed within thirty days after receipt of proof the case has become removable:

Except as provided in subsection (c), if the case stated by the initial pleading is not removable, a notice of removal may be filed within 30 days after receipt by the Defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

See Allen v. Bulk Logistics, Inc., 485 F.Supp.3d 691, 694-96 (S.D. Miss. 2020).

7. Pursuant to 28 U.S.C. § 1446(d) all adverse parties are being provided with written notice of removal, and a copy of this notice of removal is being filed with the Clerk of the Circuit Court of Jackson County, Mississippi.

# II. PLAINTIFFS' ACTION SATISFIES THE AMOUNT IN CONTROVERSY REQUIREMENT OF 28 U.S.C. § 1332(a).

- 8. Plaintiffs' action satisfies the first requirement for diversity of citizenship jurisdiction under 29 U.S.C. § 1332 (a) because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. Federal courts have original jurisdiction over civil actions between diverse parties where the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. 28 U.S.C. § 1332(a).
- 9. Whereas here, a complaint requests an unspecified amount of damages, removal of the case under § 1332 is proper where it is "facially apparent" that it is likely

the amount in controversy would exceed \$75,000.00. See *Gebbia v. Wal-Mart Stores*, *Inc.*, 233 F.3d 880, 883 (5th Cir. 2000).

- 10. Plaintiff seeks an unlimited amount of actual claims for defamation and invasion of privacy, punitive damages, emotional distress damages, and attorneys' fees. (Complaint, pg. 16.)
- 11. Federal district courts in Mississippi "have consistently held that a claim for an unspecified amount of punitive damages is deemed to exceed the federal jurisdictional minimum". Sun Life Assur. Co. v. Fairley, 485 F.Supp.2d 731, 735 (S.D. Miss. 2007). Likewise, Mississippi's federal courts have held that "Mississippi juries routinely award damages for pain and suffering and/or emotional damages in excess of \$75,000.00". Holmes v. Citi Financial Morg. Co. 436 F.Supp.2d 829, 830-31 (N.D. Miss. 2006).
- Defendant McClatchy with their responses to requests for admissions which are attached hereto as Exhibits "B" and "C", respectively. Their responses to requests for admissions are identical, and taking their responses to request numbers 12 through 15 together, Defendants are now on notice that Plaintiffs refused to deny the amount in controversy for each of their claims exceeds \$75,000.00 and refused to admit their claims are less than \$75,000.00.

Defendants McClatchy and Blake Kaplan are removing the state court case to the federal district court case within thirty (30) days' receipt and service of Plaintiffs' responses to requests for admissions by which, "it may be first ascertained that the case is one which is or has become removable" pursuant to 28 U.S.C. § 1446(b)(c).

If Plaintiffs want to prevent removal, they must file binding stipulations or affidavits once McClatchy and Blake Kaplan have removed this case to federal district court. Holmes v. Citi Financial Morg. Co. 436 F.Supp.2d 829, 830-31 (N.D. Miss. 2006). Furthermore, Plaintiffs' objections to and refusal to admit or deny the above referenced request for admissions which were intended to establish whether the federal jurisdictional threshold had been met, constitutes notice to Defendants that the amount in controversy indeed exceeds \$75,000.00, exclusive of interest and costs. Holmes, 830. Removal to the federal district court is within thirty (30) days of the notice about damages to Defendants via Plaintiffs' responses to requests for admissions served on Defendant McClatchy on January 28, 2020.

- 13. Thus, Plaintiffs' allegations more than meet the amount in controversy requirement under 28 U.S.C. § 1332(a).
- III. PLAINTIFFS' ACTION SATISFIES THE DIVERSITY OF CITIZENSHIP REQUIREMENT OF 28 U.S.C. § 1332(a).

Complete diversity of citizenship exists between all parties to this action, thereby satisfying the second prong of the diversity of citizenship standard under 28 U.S.C. § 1332(a).

- 14. Diversity of citizenship is normally determined at the time the action is commenced. *Newman-Green, Inc. v. Alfonzo-Lorrain*, 490 U.S. 826, 830 (1989). See 28 U.S.C. § 1446(b)(3).
- 15. Plaintiffs admit that, at the time the Complaint was filed, Plaintiffs were resident citizens of the State of Mississippi. (Complaint, ¶¶ 1 and 2.)
- 16. On September 17, 2021, Chatham Asset Management, LLC filed its Mississippi Rule of Civil Procedure 12 Motion to Dismiss on the ground that Plaintiffs

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failed to state a claim upon which relief could be granted, lack of jurisdiction over the person, improper venue, insufficiency of process, and insufficiency of service of process. On November 10, 2021, the parties stipulated and agreed to a Mississippi Rule of Civil Procedure 41 Stipulation of Dismissal as to Defendant Chatham Asset Management, LLC, which was entered November 10, 2021. [Doc. #29.] Chatham Asset Management, LLC was therefore no longer a party to the state court proceeding, leaving only Defendants, The McClatchy Company, LLC and Blake Kaplan.

- 17. At the time of the filing of the state court complaint and to the present time, Defendant McClatchy Company, LLC was and is a Delaware limited liability company and a citizen of the State of Delaware with its sole member being SIJ Intermediate, LLC, which was and is a Delaware limited liability company and a citizen of the State of Delaware with its sole member being SIJ Holdings, LLC which was and is a Delaware limited liability company and a citizen of the State of Delaware.
- 18. At the time of the filing of the state court complaint and to the present time, Defendant Blake Kaplan was and is an adult resident citizen of Jackson County, Mississippi, but his citizenship should be disregarded for the purposes of determining federal diversity jurisdiction and removability of the state court action.
- 19. Blake Kaplan was improperly joined as a defendant in the state court proceeding. Improper joinder can be established in two ways: (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court. *Davidson v. Georgia-Pacific, LLC*, 819 F.3d 758, 765 (5th Cir. 2016). The second situation is before us on this removal. The test is "whether the defendant has demonstrated that there is no possibility of recovery by the

plaintiff against an in-state defendant, which stated differently means that there is no reasonable basis for the district court to predict that the plaintiff might be able to recover against an in-state defendant". *Davidson*, 765. Defendants have now so demonstrated.

20. On this removal the court should first look to see if the Plaintiffs can survive a Rule 12(b)(6) challenge for failure to state a claim. However, even when a complaint states a claim that satisfies Rule 12(b)(6) but has misstated or omitted "discreet facts that would determine the propriety of the joinder... the district court may, in its discretion, pierce the pleadings and conduct a summary inquiry". *Davidson*, 765.

Although "a court may pierce the pleadings and consider summary-judgment type evidence, the standard for finding improper joinder is not the summary judgment standard in which in absence in the plaintiff's proof alone can be fatal". *Davidson*, 766.

"Rather than a standard in which no evidence on the plaintiff's part may be dispositive, 'the test for fraudulent joinder is whether the defendant has demonstrated that there is no possibility of recovery by the plaintiff against an in-state defendant....".

Examples of improper joinder based on "discreet and undisputed facts" outside the pleadings requiring a defendant to preclude the possibility of recovery are: evidence showing that the in-state doctor defendant did not treat the plaintiff; that the in-state pharmacist defendant did not fill a prescription for the plaintiff patient; and that a party's residence was not as alleged or any other fact that easily can be disproved if not true. Davidson, 766.

In their state court complaint Plaintiffs articulate no specific duty Blake Kaplan, as Regional Executive Editor of the *Sun Herald* newspaper, owed to Plaintiffs.

21. Neither do Plaintiffs articulate any breach of duty by Blake Kaplan. Such is an impossibility since Blake Kaplan had no responsibility for the publication of the allegedly defamatory and false light classified advertisement published by the *Sun Herald* newspaper on December 8, 2020. Blake Kaplan was the Regional Executive Editor of the newspaper, but he had no responsibility for any advertising at all. That was handled by a completely different office within the McClatchy newspaper chain in Fort Worth, Texas. Blake Kaplan's office at the time of the classified advertisement in issue was Gulfport, Mississippi. [Doc. # 18.] Blake Kaplan did not even know about the classified advertisement until after it was published and Plaintiffs complained about it. These are "discreet and undisputed facts".

22. In this diversity case the federal district court looks to the substantive law in Mississippi on liability of officers, directors and employees of business organizations for acts and omissions of those organizations. "Mississippi follows the general rule that individual liability of corporate officers or directors may not be predicated merely on their connection to the corporation but must have as their foundation individual wrongdoing. *Lancaster v. Miller*, 319 So. 3d 1174, 1179 (Miss. Ct. App. 2021).

.... [I]n a limited liability company, no member, manager or officer such as [Blake Kaplan] shall be obligated for a debt solely by reason of being a member, acting as a manager or acting as an officer of the limited liability company. But [Blake Kaplan] can be liable for [his] own individual tortious actions...

Lancaster, 1180.

Again, Plaintiffs make no allegations in their state court complaint of any specific tortious action on the part of Defendant Blake Kaplan.

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Similarly, Defendant Blake Kaplan incurs no personal liability for torts of a corporation "merely by reason of his official character; he is not liable for torts committed by or for the corporation unless he has participated in the wrong..." *First Mobile Home Corp. v. Little*, 298 So. 2d 676 (Miss. 1974).

# IV. SATISFACTION OF ADDITIONAL REMOVAL REQUIREMENTS.

23. Pursuant to 28 U.S.C. § 1446(a) and Local Uniform Civil Rule 5(b) Defendant has provided a copy of all process, pleadings, and orders served upon Defendant as attachments to this removal petition. Pursuant to 28 U.S.C. § 1446(d) written notice of the filing of this notice of removal is being given to all adverse parties promptly after the filing of the notice of removal, as indicated in the attached certificate of service. Pursuant to 18 U.S. C. § 1446(d) a true and correct copy of this Notice, along with accompanying exhibits, will be promptly filed with the Circuit Court of Jackson County, Mississisppi.

# V. CONCLUSION.

Defendants The McClatchy Company, LLC and Blake Kaplan have met their burdens to establish federal jurisdiction over this action pursuant to 28 U.S.C. § 1332(a), thereby entitling Defendant to remove this case to this Court under 28 U.S.C. § 1441(a). Defendant respectfully request that this Court assume jurisdiction over this case for all further proceedings.

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Respectfully submitted, this the 24 day of February, 2022.

THE McCLATCHY COMPANY, LLC and BLAKE KAPLAN, Defendants

BY:

HENRY LATED (MSB 1774)

Wise Carter Shild & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Email: hfl@wisecarter.com Telephone: 228/867-7141 Facsimile: 228/867-7142 Case: 30Cl1:21-cv-00135-DH Document #: 37-1 Filed: 02/24/2022 Page 11 of 203

# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day mailed by first class United States Mail, postage prepaid, a true and correct copy of the above document to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 24 day of February, 2022.

HENRY LATRD (MSB 1774)

Wise Carter Child & Garaway, P.A.

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ROBERT LEE. III CHARLES FOUNTAIN

**PLAINTIFF** 

**VS** 

CI- CV-21-135

CHATHAM ASSET MANAGEMENT, LLC: THE MCCLATCHY COMPANY, LLC D/B/A SUN HARALD BLAKE KAPLAN(TERMINATED 10/4/21) JOHN DOES 1-13

DEFENDANT

I, Randy Carney, Clerk of the County Court, in and for said County and State the same being a Court of Record, having a seal, do hereby officially certify that I am the proper custodian of all the books, papers, records, files and documents of said Court and of the Seal thereof, and that the foregoing is a full, true and complete copy of documents listed for the above styled case:

# - ENTIRE FILE

recorded, as full, true and complete as the same now appears of record in the records of JACKSON COUNTY, COUNTY COURT, PASCAGOULA, MISSISSIPPI in my office.

RANDY CARNEY, Clerk

Circuit Court

Jackson County, Mississippi

D.C.





Case 30 C1:21 90 0 13 5 1 S O D C Unitent Chocutocon um > File Hilled 25 date file do 2 1 9 Fagfe 3 13 of 4

Case: 30Cl1:21-cv-00135-DH Document #: 37-1 Filed: 02/24/2022 Page 13 of 203

# Nineteenth Circuit Court District (Jackson Circuit Court) CIVIL DOCKET FOR CASE #: 30Cl1:21-cv-00135-DH Internal Use Only

LETT, III et al v. CHATHAM ASSET MANAGEMENT, LLC

et al

Assigned to: Dale Harkey

**Upcoming Settings:** 

Current Days Pending: 192
Total Case Age: 192
Jury Demand: None

Nature of Suit: Other Torts (175)

Date Filed: 08/09/2021

None Found

**Plaintiff** 

ROBERT LETT, III

represented by Jesse Mitchell, III

The Mitchell Firm, PLLC 1062 Highland Colony Pkwy

Suite 150

RIDGELAND, MS 39157

769-300-0462 Fax: 601-510-1981

Email: <u>imitchell@umflegal.com</u> ATTORNEY TO BE NOTICED

Karmel Ledonia Keeton

The Mitchell Firm, PLLC

1062 Highland Colony Pkwy Suite 150

RIDGELAND, MS 39157

769-300-0462 Fax: 601-510-1981

Email: kkeeton@tmflegal.com ATTORNEY TO BE NOTICED

<u>Plaintiff</u>

CHARLES FOUNTAIN

represented by Jesse Mitchell, III

(See above for address)

ATTORNEY TO BE NOTICED

Karmel Ledonia Keeton

(See above for address)
ATTORNEY TO BE NOTICED

v.

**Defendant** 

CHATHAM ASSET MANAGEMENT,

LLC

TERMINATED: 11/09/2021

represented by Henry F Laird, mr.

Wise Carter
Wise Carter
2510 14th Street
Suite 1125

GULFPORT, MS 39501

228-867-7141 Fax: 228-867-7142 Email: hfl@wisecarter.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

<u>Defendant</u>

THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD

represented by Henry F Laird, mr.

(See above for address)

Case:30@1:c2196031351SQDBtWMentDtocutoentum>File#i@256ateffedpe 198agfe3276 4

Case: 30Cl1:21-cv-00135-DH Document #: 37-1 Filed: 02/24/2022 Page 14 of 203 ATTORNEY TO BE NOTICED

**Defendant** 

**BLAKE KAPLAN** 

TERMINATED: 10/04/2021

represented by Henry F Laird, mr. (See above for address)
LEAD ATTORNEY ATTORNEY TO BE NOTICED

# <u>Defendant</u>

**JOHN DOES 1-12** 

Date Filed	#	Docket Text
08/09/2021	1	Civil Cover Sheet. (McCreary, B.J.) (Entered: 08/11/2021)
08/09/2021	2	COMPLAINT against CHATHAM ASSET MANAGEMENT, LLC, JOHN DOES 1-12, BLAKE KAPLAN, THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD, filed by CHARLES FOUNTAIN & ROBERT LETT, III. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E,) (McCreary, B.J.) (Entered: 08/11/2021)
08/09/2021	4	SUMMONS Issued to CHATHAM ASSET MANAGEMENT, LLC. (McCreary, B.J.) (Entered: 08/11/2021)
08/11/2021	3	SUMMONS Issued to THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (McCreary, B.J.) (Entered: 08/11/2021)
08/11/2021	<u>5</u>	SUMMONS Issued to BLAKE KAPLAN. (McCreary, B.J.) (Entered: 08/11/2021)
09/15/2021	<u>6</u>	MOTION to Dismiss by Defendant BLAKE KAPLAN (Laird, Henry) (Entered: 09/15/2021)
09/15/2021	7	MOTION for Extension of Time to File Affidavits and Brief in Support of Motion to Dismiss by Defendant BLAKE KAPLAN (Laird, Henry) (Entered: 09/15/2021)
09/15/2021	8	MOTION for Extension of Time to File Answer re 2 Complaint, by Defendant THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD (Laird, Henry) (Entered: 09/15/2021)
09/17/2021	2	MOTION to Dismiss by Defendant CHATHAM ASSET MANAGEMENT, LLC (Laird, Henry) (Entered: 09/17/2021)
09/17/2021	10	MOTION for Extension of Time to File Affidavits and Brief in Support of Motion to Dismiss by Defendant CHATHAM ASSET MANAGEMENT, LLC (Laird, Henry) (Entered: 09/17/2021)
09/17/2021	11	AFFIDAVIT of Henry Laird by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN, THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 09/17/2021)
09/22/2021	12	NOTICE of Hearing re 6 MOTION to Dismiss, 2 MOTION to Dismiss by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN (Laird, Henry) (Entered: 09/22/2021)
09/28/2021	13	ORDER granting 10 Motion for Extension of Time to File. Signed by Dale Harkey on 09/27/2021. (McCreary, B.J.) (Entered: 09/28/2021)
09/29/2021	14	AFFIDAVIT of James Ruggerio, Jr. by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN, THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 09/29/2021)
10/04/2021	<u>15</u>	ORDER granting 6 Motion to Dismiss. Signed by Dale Harkey on 10/01/2021. (McCreary, B.J.) (Entered: 10/04/2021)
10/04/2021	16	ORDER granting 8 Motion for Extension of Time to Answer.Signed by Dale Harkey on 10/01/2021. (McCreary, B.J.) (Entered: 10/04/2021)

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-21	0013F DH - B
17	w-00135-DH Document #: 37-1 Filed: 02/24/2022 Page 15 of 203 MEMORANDUM in Support re 9 MOTION to Dismiss by CHATHAM ASSET MANAGEMENT, LLC. (Laird, Henry) (Entered: 10/08/2021)
18	AFFIDAVIT of Blake Kaplan by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN, THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 10/11/2021)
19	NOTICE OF SERVICE of Responses to Request for Admissions by CHATHAM ASSET MANAGEMENT, LLC, BLAKE KAPLAN. (Laird, Henry) (Entered: 10/13/2021)
20	NOTICE OF SERVICE of Responses to Request for Admissions by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 10/14/2021)
<u>21</u>	RESPONSE in Support re 6 MOTION to Dismiss by BLAKE KAPLAN. (Laird, Henry) (Entered: 10/14/2021)
<u>22</u>	MEMORANDUM in Support re 2 MOTION to Dismiss by CHATHAM ASSET MANAGEMENT, LLC. (Laird, Henry) (Entered: 10/14/2021)
23	ANSWER to 2 Complaint, by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 10/18/2021)
24	NOTICE of Appearance by Karmel Ledonia Keeton on behalf of CHARLES FOUNTAIN, ROBERT LETT, III (Keeton, Karmel) (Entered: 10/22/2021)
<u>25</u>	NOTICE OF SERVICE of Responses to Interrogatories, NOTICE OF SERVICE of Responses to Request for Production by CHATHAM ASSET MANAGEMENT, LLC. (Laird, Henry) (Entered: 10/27/2021)
<u>26</u>	NOTICE OF SERVICE of Responses to Interrogatories, NOTICE OF SERVICE of Responses to Request for Production by BLAKE KAPLAN. (Laird, Henry) (Entered: 10/29/2021)
27	MOTION for Extension of Time to File Responses to Interrogatories and Requests for Production of Documents by Defendant THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD (Laird, Henry) (Entered: 10/29/2021)
<u>28</u>	STIPULATION of Dismissal as to Defendant, Chatham Asset Management, LLC by CHARLES FOUNTAIN, ROBERT LETT, III. (Keeton, Karmel) (Entered: 11/09/2021)
<u>29</u>	PLAINTIFFS RULE 41 STIPULATION OF DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANT CHATHAM ASSET MANAGEMENT, LLC. Signed by Dale Harkey on 11/09/2021. (McCreary, B.J.) (Entered: 11/10/2021)
30	RESPONSE in Opposition re 6 MOTION to Dismiss by CHARLES FOUNTAIN, ROBERT LETT, III. (Attachments: # 1 Exhibit A - Def Blake Kaplan's Answers to Pls' 1st Set of Interrogs, # 2 Exhibit B.1 - Def Blake Kaplan's Resp to Pls' 1st Set of RFPD, # 3 Exhibit B.2 - Tr of Req No 4,) (Keeton, Karmel) (Entered: 11/11/2021)
<u>31</u>	NOTICE OF SERVICE of Request for Production of Documents Propounded to The McClatchy Company, LLC d/b/a Sun Herald by CHARLES FOUNTAIN, ROBERT LETT, III. (Keelon, Karmel) (Entered: 11/29/2021)
32	NOTICE OF SERVICE of Interrogatories Propounded to Robert Lett, III and Charles Fountain, NOTICE OF SERVICE of Request for Admissions Propounded to Robert Lett, III and Charles Fountain, NOTICE OF SERVICE of Request for Production of Documents Propounded to Robert Lett, III and Charles Fountain by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 12/29/2021)
<u>33</u>	NOTICE OF SERVICE of Responses to Request for Production by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 01/24/2022)
   <u>34</u>	NOTICE OF SERVICE of Interrogatories Propounded to Plaintiffs, Robert Lett, III and Charles Fountain by THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD. (Laird, Henry) (Entered: 01/24/2022)
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Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 204 of 387-Filled 1028/249/20221 PRABE 26 8 503 AUG 0 9 2021 RANDY CARNEY, CLERK August 6, 2021 BY\_ Jackson County Circuit Court VIA PRIORITY MAIL P.O. Box #998 Pascagoula, MS 39568-0998 Robert Lett, III & Charles Fountain v. Chatham Asset Mgint; Re: Jackson County Circuit Court Clerk, Please find enclosed Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, Civil Cover Sheet, check in the amount of \$161.00, Summons, and Complaint with Exhibits A through E against Defendants, Chatham Asset Management, LLC, The McClaudy Company, LLC d/b/a Sun Herald; Blake Kaplan; and John Does 1-12. Please file this Complaint in your usual order, issue summons so that we may properly serve the named parties and return court-stamped filed copies in the enclosed pre-paid postage envelope to our office. Should any questions or concerns arise regarding this matter please do not hesitate to contact me. Thank you for your assistance in this matter. Respectfully, esse Mitchell, III (MS Bar No. 103020) Attorney for Plaintiffs

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# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

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AUG 0 9 2021

**PLAINTIFFS** 

RANDY CARNEY, CLERK

Y\_\_\_\_\_\_ COVIL ACTION NO.

21-135(3)

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

# COMPLAINT (JURY TRIAL DEMANDED)

COME NOW Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, by and through their counsel of record, and files this, their Complaint against Defendants, Chatham Asset Management, LLC; The McClatchy Company, LLC d/b/2 Sun Herald; Blake Kaplan in his individual and official capacity as General Manager and Executive Editor; and John Does #1-12. In support of this Complaint, Plaintiffs state to wit the following:

#### **PARTIES**

- 1. Plaintiff, Robert Lee Lett, III, is an adult, male resident of Jackson County, Mississippi, residing at 4972 Huntington Drive Gaurier, MS 39553.
- Co-Plaintiff, Charles Lamont Fountain, is an adult, male resident of Jackson County,
   Mississippi, residing at 3002 10th Street Pascagoula, Mississippi 39567.
- 3. Defendant, Chatham Asset Management, LLC ("Chatham"), is a foreign corporation organized and existing under the laws of the state of New Jersey, with its principal office located at 26 Main Street Suite 204 Chatham, NJ 07928. Chatham was at the time of the incident in question, and currently still is the owner of Defendant, The McClatchy Company, LLC d/b/a Sun Herald.

- 4. Defendant, The McClatchy Company, LLC d/b/a Sun Herald ("Sun Herald"), is a foreign corporation, incorporated in Delaware and licensed to do business in the State of Mississippi, with its principal office located at 2100 Q Street Sacramento, CA 95816. It may be served with process through its registered agent CT Corporation System, located at 645 Lakeland East Drive, Suite 101, Flowood, MS 39232.
- 5. Defendant, Blake Kaplan, is upon information and belief, an adult, male resident citizen of Jackson County, Mississippi and may be served with process at his place of residence, located at 1629 Springridge Road Gautier, MS 39553 or pursuant to Rule 4 of the Mississippi Rules of Civil Procedure, wherever he may be found. At all times relevant, Kaplan was employed by Defendant, Sun Herald, and supervised, controlled, and/or managed Sun Herald's newspaper with facilities located at 2505 14th Street Suite 400 Gulfport, MS 39501.
- 6. John Does #1-12 include those persons or entities unknown to Plaintiffs at this time who were owners, directors, managers, supervisors, editors, writers, journalists, producers, employees, contractors, and/or agents of Defendants, Chatham; Sun Herald; or Kaplan; and who played a role in the publication of the libelous advertisement at issue in this complaint (the "Advertisement"), failed to prevent the Advertisement's publication, and/or are generally liable to Plaintiffs as a result of the Advertisement's publication. Upon information and belief, John Does #1-12 are resident and nonresident Defendants doing business in the State of Mississippi or residing as citizens in the State of Mississippi. The filing of this Complaint is a filing against all Defendants and this Complaint will be appropriately amended in accordance with the Mississippi Rules of Civil Procedure when their identities are ascertained.
- 7. Plaintiffs reserve the right to identify and/or change the identity of these Defendants based on further investigation or any pre-trial discovery conducted in this action.

# **IURISDICTION, VENUE, AND JOINDER**

- 8. Subject matter jurisdiction is appropriate pursuant to Miss. Const. art. VI §156 (1890) and Miss. Code Ann. § 9-7-81 because the Circuit Court of Jackson County, Mississippi has original jurisdiction and the amount in controversy in this action exceeds \$200.00.
- 9. Personal jurisdiction is appropriate over Defendant, Chatham, the New Jersey based owner of Defendant, Sun Herald, by means of piercing the corporate veil. Personal jurisdiction is appropriate over Defendant, Sun Herald, a Delaware company with its principal office in California, as Defendant committed a tort against two Mississippi residents and pursued business in the state of Mississippi, specifically in Jackson County. Personal jurisdiction is appropriate over Kaplan because he is an adult, Mississippi state resident.
- Venue is proper pursuant, to Miss. Code Ann. §11-11-3, because the substantial alleged acts or omissions which led to Plaintiffs' injuries occurred in Jackson County, Mississippi. Moreover, in Short v. Versiga, the Mississippi Supreme Court held that, "venue... is proper in the district where the injured party resides and where the defamatory statements were published." Short v. Versiga, 283 So. 3d 182, 186 (¶12) (Miss. 2019) (citing Seidel v. Kirby, 296 F. Supp. 3d 745, 747 (D. Md. Oct. 27, 2017) (internal citations omitted)).
- 11. Joinder is appropriate pursuant to Miss. Civ. R. Proc. 20(a) as Plaintiffs assert against Defendants rights to relief arising out of the same series of transactions or occurrences, and questions of law and facts common to all these persons will arise in this action.

# **FACTS**

- 12. Plaintiffs hereby incorporate and re-allege all claims herein set forth in the previous paragraphs.
- 13. At all times relevant in this case, Defendant, Sun Herald, was and currently is in name, the owner and publisher of a newspaper of general circulation known as the Sun Herald, which is

published in the city of Gulíport, Mississippi, at 2505 14th Street Suite #400 Gulíport, Mississippi 39501, and circulated daily throughout South Mississippi, including Jackson and Harrison counties. In addition to print publications, the Sun Herald is also published online at www.sunherald.com.

- 14. Upon information and belief, on, or about September 4, 2020, Defendant, Chatham, acquired "substantially all assets" of Defendant, Sun Herald, in a Chapter 11 Bankruptcy auction. (See Ex. A The McClatchy Co., LLC Press Release). Per the exhibited press release, "the entirety of McClatchy's 30 news organizations and all of its employees transitioned to a new private entity under Chatham ownership." (See Ex. A).
- 15. On, or about December 8, 2020, the Sun Herald, with Kaplan acting individually and in his official capacity as General Manager and Executive Editor, published in mass, both in print and in digital format, the alleged false and defamatory Advertisement of and concerning Plaintiff and Co-Plaintiff within the Classifieds section of its newspaper. (See Ex. B Sun Herald Defamatory Advertisement 12/08/20). Specifically, the Advertisement was listed on page "4B" under the Classifieds' "Announcements" heading, and subheadings "Misc. Announcements" and "Health Notification."
- 16. The Advertisement names "Robert Lee Lett" and "Charles Lamont Fountain" as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing.
- 17. On, or about December 8, 2020, Plaintiff, Robert Lee Lett, III, personally called the Sun Herald call center inquiring into the Advertisement's publication and demanding a retraction.
- 18. On, or about December 8, 2020, a family member of Co-Plaintiff, Charles Lamont Fountain, called the Sun Herald call center inquiring into the same.
- 19. On, or about December 9, 2020, the Sun Herald, with Kaplan acting individually and in his official capacity as General Manager and Executive Editor, re-published in mass, both in print

and in digital format, the same false and defamatory Advertisement of and concerning Plaintiff and Co-Plaintiff in a separate edition of its newspaper on page "6B." (See Ex. C - Sun Herald Defamatory Advertisement 12/09/20).

- 20. On, or about December 11, 2020, the Sun Herald published a retraction, printed in three locations: (1) on page "5B" of the Classifieds section of the newspaper where the false and defamatory Advertisement initially appeared, (2) on page "2A" of the newspaper where retractions are generally posted, and (3) online. (5 Ex. D Sun Herald Retraction 12/11/20). Overall, the retraction was generic in nature and woefully deficient. Most notably, it lacked specificity, accountability, and any remorse given the severity of harm caused by the initial Advertisement's publication. Furthermore, the retraction failed to address the Sun Herald's second re-print of the Advertisement on December 9, 2020, and failed to acknowledge Robert Lee Lett, III, Charles Lamont Fountain, or Neal Rainey, the other gentleman harmed, by name.
- 21. Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, now bring this, their Complaint against Defendants for Defamation and Invasion of Privacy: Palse Light.

# STATUTORY REQUIREMENTS

- 22. Plaintiffs hereby incorporate and re-allege all claims set forth in the previous paragraphs.
- 23. Pursuant to Mississippi Code § 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory.
- 24. On April 12, 2021, Plaintiffs Certified Mailed Defendant, Chatham, written notice; detailing with specificity each false and defamatory statement within the Advertisement in question,

which was signed for and received on April 15, 2021. (See Ex. E - Pl's Letters of Notice for Statutory Compliance).

- 25. On April 12, 2021, and April 17, 2021, Plaintiffs served Defendants, Sun Herald and Kaplan, written notice respectively via process server, detailing with specificity each false and defamatory statement within the Advertisement in question. (See Ex. E).
  - 26. As such, Plaintiffs have met the statutory requirement of Mississippi Code § 95-1-5.
- 27. Pursuant to Mississippi Code § 15-1-35 and case law, the statute of limitations for a defamation and invasion of privacy: false light claim in Mississippi is one year, beginning on "the date of publication of the allegedly libelous statement to a third person." Stabeli v. Smith, 548 So. 2d 1299, 1302 (Miss. 1989) (citing Miss. Code Ann. § 15-1-35) (citations omitted).
- 28. Publication of the false and defamatory Advertisement to the Mississippi Gulf Coast community occurred on December 8, 2020, and December 9, 2020.
  - 29. Plaintiffs' claims are therefore timely and are not barred by the statute of limitations.

### APPLICABLE STANDARD

- 30. Plaintiffs hereby incorporate and re-allege all claims set forth in the previous paragraphs.
- 31. The standard of liability applied to "a defamatory falsehood [is] according to the plaintiff's status as either a private individual or public figure." Whitten v. Commercial Dispatch Pub. Co., 487 So. 2d 843, 844 (Miss. 1986). Generally, "a showing of negligence [is required] before a private figure may recover an award of actual damages for libel; a public figure must show actual malice...."

  Id. (citations omitted). "[W]hether the actual malice standard should be applied in a given defamation case [bears on two questions.] The first is 'Is the plaintiff a public official/public figure or a private figure?". The second is, 'Regardless of the plaintiff's status, is the alleged defamation a

matter of public concern or interest?"." Stabeli v. Smith, 548 So. 2d 1299, 1304 (Miss: 1989) (citations omitted).

- 32. Plaintiffs are neither public officials nor public figures. Plaintiffs are private figures.
- 33. Plaintiffs have not sought or held any public office or government position. Nor have Plaintiffs appeared to the public to have a significant role in the business of government or public affairs.
- 34. Plaintiffs are not public figures as they are not candidates for public office, nor have they achieved pervasive fame or notoriety to be considered as such. Furthermore, as private figures, Plaintiffs have not voluntarily "thrust [themselves] . . . into the vortex of a matter of legitimate public interest" so as to be considered quasi- or vortex public figures. Forguson v. Walkins, 448 So. 2d 271, 277 (Miss. 1984) (citations omitted).
- 35. Based on the facts, Plaintiffs are not public officials or figures within the meaning of New York Times v. Sullivan, 376 U.S. 254 (1964) or its progeny.
- 36. Regardless of Plaintiffs' status, the sexual partners and STD/ HIV status of Plaintiffs are not a matter of public concern or interest. In fact, the Supreme Court has held that, "no aspects of life [are] more personal and private than those having to do with one's sexual organs and reproductive system." Young v. Jackson, 572 So. 2d 378, 382 (Miss. 1990). The Restatement Second of Torts further states that, "[s]exual relations . . . are normally entirely private matters, as are . . . many unpleasant or disgraceful or humiliating illnesses . . . ." Restatement (Second) of Torts § 652D cmt. b (Am. Law Inst. 1977).
  - 37. Based on the facts, the alleged defamation is a private matter.
- 38. Because Plaintiffs are private figures and the alleged defamation is a private matter, actual malice is not applicable. Rather, liability should be evaluated using a negligence standard.

- 39. Liability for an invasion of privacy: false light claim should also be evaluated using a negligence standard when a private figure is involved. While "[t]here is no consensus as [to] the applicable standard [to apply to a false light privacy action by a private plaintiff], and the Mississippi Supreme Court has not [yet] addressed the issue[, in light of Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974),] numerous courts have logically concluded that a negligence standard should apply." Am. Nat'l Gen. Inc. Co. v. Jackson, 203 F. Supp. 2d 674, 685 n.17 (S.D. Miss 2001).
- 40. In Gertz, "[t]he Court substantially altered the direction of First Amendment law [... when it] established a public figure-private figure dichotomy." Wood v. Hustler Magazine, Inc., 736 F.2d 1084, 1090 (5th Cir. 1984). This dichotomy was first utilized in defamation lawsuits, in which an actual malice standard was applied to public and quasi-public officials and figures in evaluating liability, while a negligence standard was applied to private figures. See generally Gertz, 418 U.S. 323 (1974). The Court opined that, "states had a greater interest in protecting private figures who had not 'invite[d] attention and comment' and who generally 'lack effective opportunities for rebuttal." Wood, 736 F. 2d at 1090 (quoting Gertz, 418 U.S. at 344).
- 41. In the same manner, Gentz' dichotomy and analysis should be applied to Plaintiffs' claim for invasion of privacy: false light. In fact, "[o]n the particular issue of standard of care under false light... the Restatement [Second of Torts] qualifies its actual malice standard with a caveat [that ...] leaves open the possibility that liability may be based on a showing of negligence as to truth or falsity." Id at 1091.
- 42. Because the matter at issue in Plaintiffs' invasion of privacy: false light claim is their public defamation by Defendants, and the seandard applied in Plaintiffs' defamation claim is a negligence standard it follows that Plaintiffs be allowed to apply a negligence standard here.

# **CAUSES OF ACTION**

# FIRST CAUSE OF ACTION: DEFAMATION

- 43. Plaintiffs hereby incorporate and re-allege all claims set forth in the previous paragraphs.
- 44. Defendants defamed Plaintiffs by negligently publishing statements about them in which Defendants knew or should have known to be false.
  - 45. To recover in a defamation lawsuit under Mississippi law, a plaintiff must establish:
  - (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication.

Fulton v. Mississippi Publishers Corp., 498 So. 2d 1215, 1216 (Miss. 1986) (citing Restatement (Second) of Torts § 558 (Am. Law Inst. 1997)).

### 46. Defendants' statement that:

Health Notification HEALTH DEPT. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT www.msdhs.com: NEAL RAINEY 38 of PASCAGOULA, CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA, ROBERT LEE LETT 39 of MOSS POINT (NOTIFIED 12-7-2020), 601-576-7400 mshealthdcpt@mail.com

(See Ex. B) is false as it concerns Plaintiffs. Specifically, per a December 2020 phone call between Plaintiff, Robert Lee Lett, III, and the Mississippi State Department of Health ("MSDH"), and a December 2020 phone call between a family member of Co-Plaintiff, Charles Lamont Fountain, the health department was not notified to contact Plaintiff or Co-Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff or Co-Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Morcover, Plaintiff and Co-Plaintiff are not STD/HIV positive, nor have they had sexual relations with a STD/HIV positive person or persons as Defendants' statement unmistakably portrays and as

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Plaintiff and Co-Plaintiff reasonably understood Defendants' statement to mean. Plainly stated, Defendants' statement concerning Plaintiff and Co-Plaintiff is not true. Defendants' later retraction further supports this falsity noting that, "[t]he Sun Herald has learned that the health department did not forward the advertisement to the newspaper . . ." (See Ex. C). In fact, simple review of Defendants' statement shows that both the MSDH's website and email address are fictitious accounts, ending in ".com" rather than ".gov," the domain used by official government organizations in the United States.

- 47. Defendants' statement is defamatory as it concerns Plaintiff and Co-Plaintiff in that Defendants' false narrative about Plaintiff and Co-Plaintiff's private lives, including their sexual partners and STD/HIV status, "tends... to harm the reputation[s] of [Plaintiff and Co-Plaintiff so] as to lower [them] in the estimation of the community or to deter third persons from associating or dealing with [them]." Restatement (Second) of Torts § 559 (Am. Law Inst. 1997).
- 48. Defendants' false and defamatory statement is also "of and concerning Plaintiff" as the written statement specifically lists Plaintiff, Robert Lee Lett, III's name: "Robert Lee Lett," and identifying information: "39," and "of Moss Point." While the Advertisement does not list Plaintiff's entire legal name, "Robert Lee Lett, III," Plaintiff generally goes by "Robert Lee Lett" or "Robert Lett" within the community. As it relates to Plaintiff's age, while the Advertisement incorrectly states that Plaintiff is "39," (Plaintiff is 35 years old with a date of birth of June 16, 1985), Plaintiff is the only Robert Lee Lett of Moss Point, Mississippi and the surrounding area that is close enough in age to be the party referred to. Lastly, while Plaintiff currently resides in Gautier, Mississippi, and did so at the time of the Advertisement's publication, Plaintiff is originally from and well-known in Moss Point, Mississippi. A reasonable person could therefore understand the Advertisement as intending to refer to Plaintiff.

- 49. The Restatement Second of Torts states that "[a] defamatory communication is made concerning the person to whom its recipient correctly, or mistakenly but reasonably, understands that it was intended to refer." Restatement (Second) of Torts § 564 (Am. Law Inst. 1997) (emphasis added). The comment section further notes that, "[i]t is enough that it is so understood even though he is so inaccurately described that it is extraordinary that the communication is correctly understood." Id. at cmt. a (emphasis added). Despite the inaccuracies in Defendants' statement, Plaintiff understood Defendants' statement as intending to refer to him. In fact, Plaintiff understood Defendants' statement as intending to refer to him so much so that on the first date of publication, Plaintiff called the Sun Herald's call center demanding a retraction.
- 50. Furthermore, "[i]r is not necessary that the plaintiff be designated by name; it is enough that there is such a description of or reference to him that those who hear or read reasonably understand the plaintiff to be the person intended." Id at cmt. b (emphasis added). Members of the Mississippi Gulf Coast community who heard or read the Advertisement reasonably understood Plaintiff as being the person intended. Not only did members of the community teach out to Plaintiff and Plaintiff's family members via phone call and text message regarding the Advertisement, but social media posts naming Plaintiff as the intended party as well as a picture of Plaintiff and his wife were associated with the Advertisement and circulated.
- 51. Although the Advertisement failed to list Plaintiff, Robert Lee Lett, III's, entire legal name, correct age, or current place of residence, based on the information provided, Plaintiff as well as other members of the Mississippi Gulf Coast community reasonably understood the Advertisement as intending to refer to Plaintiff.
- 52. Defendants' false and defamatory statement is "of and concerning Co-Plaintiff" as the written statement specifically lists Co-Plaintiff's name: "Charles Lamont Fountain," and identifying information: "42," and "of Pascagoula." Given the information provided, Co-Plaintiff as well as other

members of the Mississippi Gulf Coast community reasonably understood the Advertisement as intending to refer to Co-Plaintiff.

- 53. Defendants published defamatory matter about Plaintiff and Co-Plaintiff to a third party. Specifically, Defendants intentionally or negligently communicated false and defamatory information about Plaintiff and Co-Plaintiff to parties other than Plaintiff and Co-Plaintiff, when on or about December 8, 2020, Defendants printed and distributed to readers a paper-copy of its daily newspaper, containing the alleged libelous Advertisement about Plaintiff and Co-Plaintiff within the Classifieds section. Defendants further published defamatory matter about Plaintiff and Co-Plaintiff to a third party when said Advertisement was posted in Sun Herald's online newspaper at www.sunherald.com, and when Defendants re-printed and distributed a second paper edition to readers on or about December 9, 2020. As a result of Defendants' publication, the Advertisement was further circulated within the Mississippi Gulf Coast Community via social media platforms, word of mouth, and text message.
- 54. As it relates to publication amongst Defendants, Plaintiff and Co-Plaintiff assert an agency theory. See Restatement (Second) of Torts § 577 cmt. f (Am. Law Inst. 1997) (stating that "One is liable for the publication of defamation by a third person whom as his servant, agent or otherwise he directs or procures to publish defamatory matter.").
- 55. Defendants' publication constitutes two publications, each with their own cause of action. The Restatement Second of Torts states that, "[a]ny one edition of a book or newspaper... is a single publication." Id. at § 577A(3). Defendants published two separate editions of the Sun Herald on December 8, 2020, and December 9, 2020, respectively, each containing the alleged defamatory Advertisement.
- 56. Plaintiff and Co-Plaintiff did not consent to the publication of defamatory matter concerning them.

- 57. Defendants' publication was unprivileged. Neither an absolute nor conditional/qualified privilege was in existence at the time of the Advertisement's publication to provide Defendants immunity from liability.
- 58. Defendants were negligent. Defendants owed Plaintiff and Co-Plaintiff a duty of care to act with a reasonable level of care in publishing the Advertisement at issue. Defendants breached this duty when Defendants failed to act in a manner consistent with those in the journalism profession. Specifically, Defendants failed to research, fact check, or verify the obviously false information contained within the Advertisement. Defendants failed to verify the source of information, let alone the source's trustworthiness. Defendants failed to review the Advertisement and edit for any errors or falsities and/or Defendants' processes for review and safeguard failed or were not properly employed. Defendants further failed to supervise or manage the editing process. Overall, Defendants failed to follow good journalistic practices, including internal policies and procedures. Defendants were the direct and proximate cause of Plaintiff and Co-Plaintiff's damages. Due to Defendants' breach, a false and defamatory statement about Plaintiff and Co-Plaintiff was published to the Mississippi Gulf Coast community. As a result of Defendants' publication, Plaintiff and Co-Plaintiff suffered and will suffer damages as set out below.
- 59. Actionability of Defendants' statement is apparent as Plaintiff and Co-Plaintiff claim the existence of special harm due to its publication. Namely, psychiatric, psychological, and therapeutic expenses.
- 60. Actionability of Defendants' statement is also apparent irrespective of special harm as Defendants published a false statement about Plaintiff and Co-Plaintiff that is considered "defamation per se."
- 61. The Supreme Court has held that if a statement is "libelous per se, proof of a malicious intent is not necessary to sustain the action; [further] it is not necessary to allege or prove special

damages, because the law presumes damages per se from the writing of the libelous words." Smith v. Byrd, 225 Miss. 331, 342 (1955) (citations omitted).

- 62. Generally, Mississippi follows the common law rule that, "[a]ny written or printed language which tends to injure one's reputation, and thereby expose him to public hatred, contempt or ridicule, degrade him in society, lessen him in public esteem or lower him in the confidence of the community is actionable per se." Fulion, 498 So. 2d at 1217 (citations omitted).
  - 63. Statements are further actionable per se if they are:
  - (1) Words imputing the guilt or commission of some criminal offense involving moral turpitude and infamous punishment. (2) Words imputing the existence of some contagious disease. (3) Words imputing unfitness in an officer who holds an office of profit or emolument, either in respect of morals or inability to discharge the duties thereof. (4) Words imputing a want of integrity or capacity, whether mental or pecuniary, in the conduct of a profession, trade or business; and... (5) words imputing to a female a want of chastity.

Phillips Brothers, LP v. Winstead, 129 So. 3d 906, 928 (§76) (Miss. 2014) (citing Speed v. Scott, 787 So. 2d 626, 632 (Miss. 2001) (emphasis added) (citations omitted)).

64. Defendants' Advertisement alleging Plaintiff and Co-Plaintiff were being sought by a government agency for testing of a communicable disease is defamation per se, and more precisely "libel per se" as it is written defamation. (See Ex. B).

### SECOND CAUSE OF ACTION; INVASION OF PRIVACY FALSE LIGHT

- 65. Plaintiffs hereby incorporate and re-allege all claims set forth in the previous paragraphs.
- 66. Defendants invaded Plaintiffs' privacy by knowingly, intentionally, willfully, or negligently publicizing statements about Plaintiff and Co-Plaintiff which were highly offensive to a reasonable person, and which Defendants knew or should have known to be false.

# 67. Generally,

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

- (a) The false light in which the other was placed would be highly offensive to a reasonable person, and
- (b) The actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

Restatement (Second) of Torts § 652E (Am. Law Inst. 1997).

- Defendants gave publicity to a matter concerning Plaintiffs when Defendants published a defamatory advertisement about Plaintiff and Co-Plaintiff in two editions of their print and online newspaper on, or about December 8 and 9, 2020. This matter was "of and concerning Plaintiff and Co-Plaintiff," as previously discussed in their claim for defamation, as the Advertisement specifically identified Plaintiff and Co-Plaintiff by name and included additional identifying information. By printing this matter in a newspaper with a daily circulation rate of 13,848 print readers in the year 2020 and 794,000 unique online visitors in the month of December', Defendants "communicated this matter to the public at large, or to so many persons that the matter [was] regarded as substantially certain to become one of public knowledge." Id. at § 652D cmt. a. Moreover, Defendants' publication was further circulated within the Mississippi Gulf Coast Community via social media platforms, word of mouth, and text message.
- 69. The matter publicized placed Plaintiff and Co-Plaintiff in a false light. As addressed in their defamation claim, Defendants' statement regarding Plaintiff and Co-Plaintiff was false and defamatory in nature.
- 70. The false light Plaintiff and Co-Plaintiff were placed in was highly offensive to the reasonable person. The Restatement Second of Torts states that "Ilt is only when there is such a

<sup>&#</sup>x27;The McClatchy Co., LLC, Our Impact Markets, https://www.mcclatchy.com/our-impact/markets/sun-hetald/#navlink=mi\_footer (last visited Apr. 1, 2021).

major misrepresentation of his character, history, activities or beliefs that serious offense may reasonably be expected to be taken by a reasonable man in his position . . . ." Id at § 652D cmt. c. Here, publicity given to Plaintiff and Co-Plaintiff's alleged sexual partners and STD/HIV status would be highly offensive to the reasonable person as one's sexual organs and reproductive system are strongly regarded as personal and private. See Young, 572 So. 2d 378, 382 (Miss. 1990).

- 71. A negligence standard of liability should be applied as it relates to the actor's knowledge of the truth or falsity of the publicized matter as more thoroughly discussed in the Applicable Standard heading above and as analyzed in Plaintiff and Co-Plaintiff's defamation claim.
  - 72. Plaintiffs plead their second cause of action as an additional remedy.

## DAMAGES

- 75. As a direct and proximate consequence and result of the negligence alleged above, Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, suffered, and will suffer, the following injuries and damages:
  - a. Future psychiatric, psychological, and therapeutic expenses;
  - b. Injury to reputation and personal humiliation;
  - c. Mental anguish and suffering:
  - d. All damages allowed by law in defamation and invasion of privacy actions specified under the Mississippi Constitution, federal, and state laws.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, demand a trial by jury and a judgment from and against Defendants for actual and compensatory damages in an amount to be determined by a jury, together with pre-judgment and post-judgment interest in an amount to be determined at trial. Plaintiffs further pray that this Court will award punitive damages against the individual Defendants, Plaintiffs' costs in pursing this lawsuit, including attorneys' fees, and any other relief to which they may be entitled under Mississippi law.

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Plaintiffs reserve the right to amend this Complaint as needed.

RESPECTFULLY SUBMITTED, this the 6th day of August 2021.

# ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

By:

/s/ Jesse Mitchell, III

Jesse Mitchell, III (MSB #103020)

Attorney for Plaintiff

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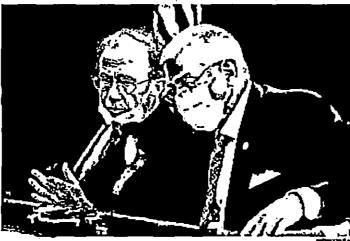
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# Court: Mississippi school disparity lawsuit may proceed

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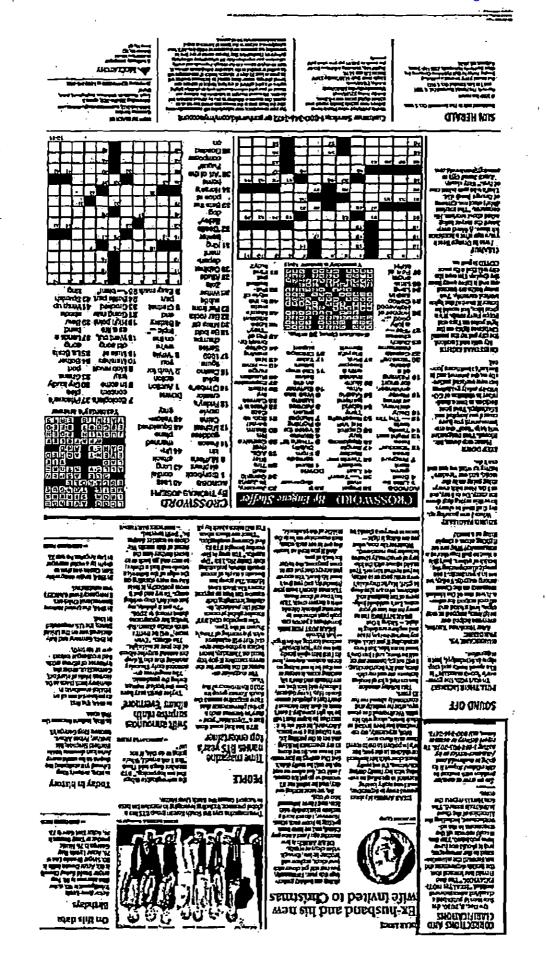






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### SPORTS IN 1921

# NFL Man of Year nominees include Wilson, T. Kelce



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# PROOF OF SERVICE - MISS. CODE § 95-1-5 NOTICE

Chatham Asset Management, LLC 26 Main Street Suite #204 Chatham, NJ 07928

I, the undersigned process server, served the requisite Min. Code § 95-1-5 Notice upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

- () FIRST CLASS MAIL AND ACKNOWLEDGMENT OF SERVICE. By mailing (by first class mail, postage prepaid), on the date stated in the attached Notice, copies to the person served, together with copies of the form of notice and acknowledgment and return covelope, postage prepaid, addressed to the sender (Attach completed acknowledgment of receipt pursuant to M.R.C.P. Form 1B).
- () PERSONAL SERVICE. I personally delivered copies of the Notice on the \_\_\_day of April, 2021, to Chatham Asset Management. LLC, where I found said person(s) in \_\_\_\_\_\_ County of the State of Mississippi.
- (X) CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served).

At the time of the service I was at least 18 years of age and not a party to this action.

Fee for service: \$ 25.00

Process server must list below (Please print or type)

Name: Dedra Martin Brent

Address: 1062 Highland Colony Parkway Suite #150

Ridgeland, MS 39157

Telephone: (769) 300-0462

STATE OF MISSISSIPPI COUNTY OF MADISON

Dedra Martin Brent personally appeared before me, the undersigned authority in and for the state and county aforesaid, and states on oath, upon first being duly swom by me, that the matters and facts set forth in the foregoing "Proof of Service-Miss. Code § 95-1-5 Notice" are true and correct as therein

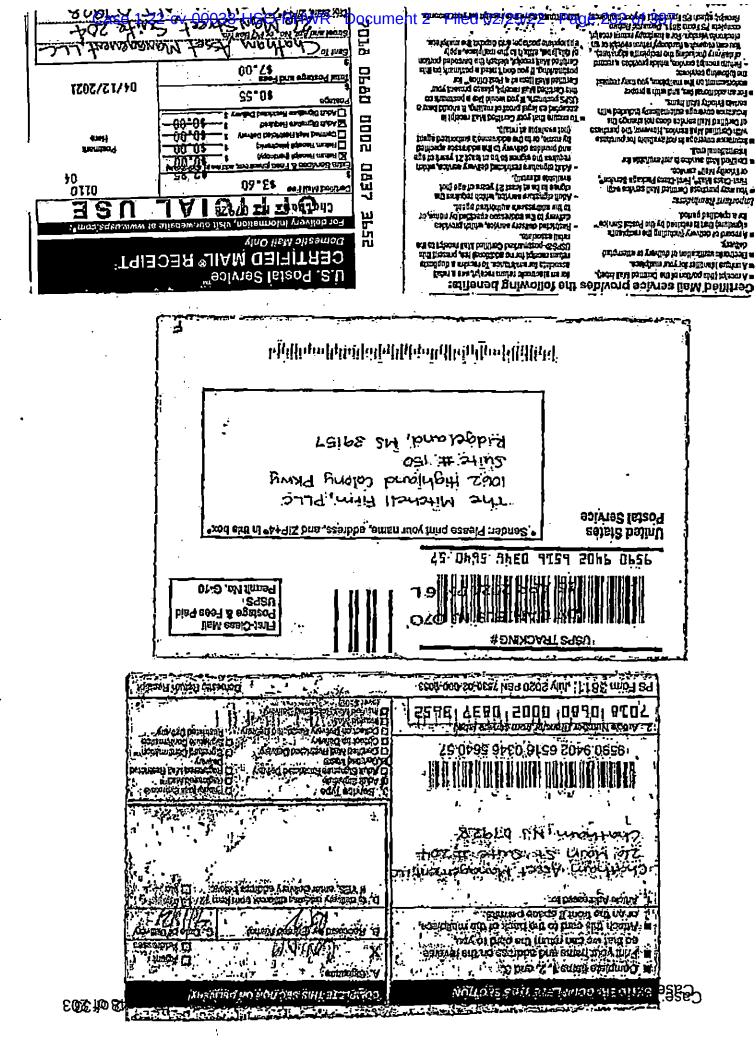
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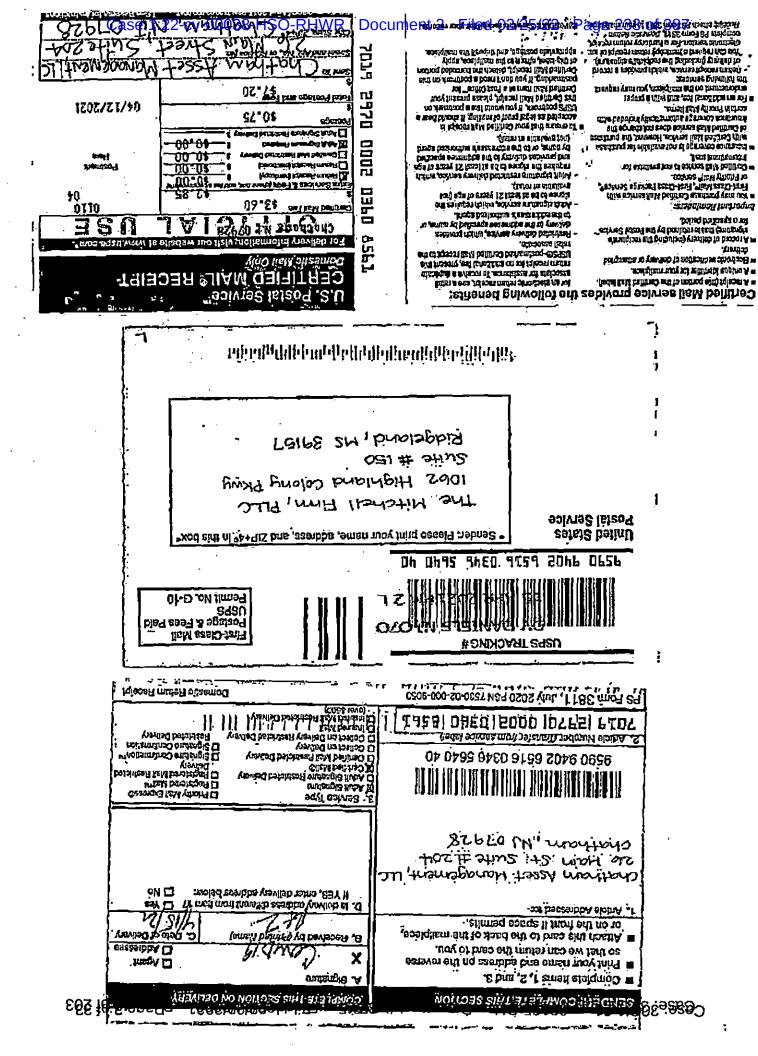
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Swom to and subscribed before me this the  $2^{\frac{1}{2}}$  day of April, 2021.

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# ITCHELL FIRM TRIAL ATTORNEYS

April 12, 2021.

Chatham Asset Management, LLC. 26 Main Street Suite 204

Chatham, NJ 07928

To Whom It May Concern,

VIA CERTIFIED MAIL

Pursuant to Mississippi Code Section, 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Robert Lee Lett, III's, written notice in compliance with the Code.

On, or about December 8, 2020, The McClatchy Company, LLC, whose assets are owned by you, Chatham Asset Management, LLC, and for whom Blake Kaplan serves as Executive Editor and General Manager, printed and published in mass a fictitious and defamatory advertisement or article within its daily Mississippi Gulf Coast newspaper, the Sun Herald. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, under the "Announcements" heading in the Classifieds section, and under the subheadings: "Misc. Announcements" and "Health Notification." This advertisement was further re-printed in a separate print edition of the Sun Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain, but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Robert Lee Lett as having been reported as coming into contact, with-an, STD/HIV positive person or persons, and to report to the nearby health department for testing. These statements are false. Specifically, the following statements from the article are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY-HEALTH DEPT... ROBERT LEE LETT 39 of MOSS POINT (NOTIFIED 12-7-2020)..."

Per a December 2020 phone call between Plaintiff and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

# 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

## 3. "39"

Plaintiff is 35 years old. DOB: 6/16/1985: This identifier is false, but not necessarily defamatory.

# 4. "mshealthdept@mail.com"

The MSDH email address published in the Sun Herald does not exist. Further, email addresses for United States' government entities end in ".gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

While this advertisement does not list Plaintiff's entire legal name, correct age, or current place of tesidence, based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this article as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and ridiculed Plaintiff regarding the defamatory statements.

By printing and disseminating an advertisement of this nature, journalism standards and othics for accuracy and truth in reporting were violated, as well as internal policies and procedures. This advertisement was blatantly false on its face and should have been intercepted by the editing department at The McClatchy Company, LLC, or by Blake Kaplan through simple review. Both The McClatchy Company, LLC and Blake Kaplan utterly failed in this regard, neglecting their editorial duties. As owner of The McClatchy Company, LLC, Chatham Asset Management, LLC is also vicariously liable.

Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for both your company's and employees' actions, or lack thereof, is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was worfully inadequate and extremely short in duration to suffice. This response should have been as loud and as powerful as the initial actions The McClatchy Company, LLC and Blake Kaplan took when they first defamed Robert Lee Lett, III.

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Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought The Mitchell Finn's counsel in this case. Should any questions or concerns arise regarding this matter, feel free to contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020)

THE MITCHELL FIRM, PLLC

/klk

Enclosures

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# Defamatory Advertisement



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### Retraction

# CORRECTIONS AND CLARIFICATIONS

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-PICATION," The Sun Herald has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The Son Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the error.

See an error or another problem with content in this edition? Report it by going to sunherald com/customer-service or by calling 1-888-905-2036. To report delivery or account issues, call 800-346-2472.

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# ITCHELL FIRM TRIAL ATTORNEYS

April 12, 2021.

Chatham Asset Management, LLC
26 Main Street Suite 204

VIA CERTIFIED MAIL

To Whom It May Concern,

Chatham, NJ 07928

Pursuant to Mississippi Code Section, 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Charles Lamont Foundain's written notice in compliance with the Code.

On, or about December 8, 2020, The McClatchy Company, LLC, whose assets are owned by you, Chatham Asset Management, LLC, and for whom Blake Kaplan serves as Executive Editor and General Manager, printed and published in mass a fictitious and defamatory advertisement or article within its daily Mississippi Gulf Coast newspaper, the Sun Henild. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, under the "Announcements" heading in the Classifieds section, and under the subheadings: "Misc. Announcements" and "Health Notification." This advertisement was further re-printed in a separate print edition of the Sun Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain, but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Charles Lamont Fountain as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing. Based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this advertisement as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and ridiculed Plaintiff regarding the defamatory advertisement. However, these statements are false. Specifically, the following statements from the advertisement are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY-HEALTH DEPT... CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA (NOTIFIED 12-7-2020)..."

Per a December 2020 phone call between Plaintiff's family member and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

# 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herold does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

# 3. "mshcalthdept@mail.com"

The MSDH email address published in the Sun Hendd does not exist. Further, email addresses for United States' government entities end in ".gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

By printing and disseminating an advertisement of this nature, journalism standards and ethics for accuracy and truth in reporting were violated, as well as internal policies and procedures: This advertisement was blatantly false on its face and should have been intercepted by the editing department at The McClatchy Company, LLC, or by Blake Kaplan through simple review. Both The McClatchy Company, LLC and Blake Kaplan utterly failed in this regard, neglecting their editorial duties. As owner of The McClatchy Company, LLC, Chatham Asset Management, LLC is also vicariously liable.

Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for both your company's and employees' actions, or lack thereof, is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was woefully inadequate and extremely short in duration to suffice. This response should have been as loud and as powerful as the initial actions The McClatchy Company, LLC and Blake Kaplan took when they first defamed Charles Lamont Fountain.

Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought The Mitchell Firm's counsel in this case. Should any questions or concerns arise regarding this matter, feel free to contact the firm at (769) 300-0462.

sincereiy,

Jesse Mitchell, III (MS Bar No. 103020)

THE MITCHELL FIRM, PLLC

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# **Defamatory Advertisement**



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### Retraction

# CORRECTIONS AND CLARIFICATIONS

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-PICATION." The Sun Herald has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The Sun Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the CITOI.

See an error or another problem with content in this edition? Report it by going to sunherald, com feusiomer-service or by calling 1-888-905-2036. To report delivery or account issues, call 800-346-2472.

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# PROOF OF SERVICE - MISS. CODE & 95-1-5 NOTICE

The McClatchy Company, LLC d/b/a Sun Herald Attn: C.T. Corporation System Registered Agent 645 Lakeland East Drive Suite #101 Flowood, MS 39232

I, the undersigned process server, served the requisite Min. Code § 95-1-5 Notice upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

- () FIRST CLASS MAIL AND ACKNOWLEDGMENT OF SERVICE. By mailing (by first class mail, postage prepaid), on the date stated in the attached Notice, copies to the person served, together with copies of the form of notice and acknowledgment and return envelope, postage prepaid, addressed to the sender (Attach completed acknowledgment of receipt pursuant to M.R.C.P. Form 1B).
- (X) PERSONAL SERVICE. I personally delivered copies of the Notice on the \(\frac{12}{2}\) day of April, 2021, to The McClatchy Company: LLC d/b/a Sun Herald, where I found said person(s) in Rankin County of the State of Mississippi.
- () CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served).

At the time of the service I was at least 18 years of age and not a party to this action. Fee for service: \$25.

Process server must list below (Please print or type)

Name: Dedra Martin Brent

Address: 1062 Highland Colony Parkway Suite #150

Ridgeland, MS 39157

Telephone: (769) 300-0462

STATE OF MISSISSIPPI COUNTY OF Madison

Dedra Martin Brent personally appeared before me, the undersigned authority in and for the state and county aforesaid, and states on oath, upon first being duly swom by me, that the matters and facts set forth in the foregoing "Proof of Service-Miss. Code § 95-1-5 Notice" are true and correct as therein stated.

Process Server (Signature)

Sworn to and subscribed before me this the 12th day of April, 2021.

JUSTIN GAUTHIE

Feb. 21, 2022

Notary Public

Cesse: 39641221ck-0603550bH Document#:#372-15 #Filed: 0080010000 Prage 604 of 208

\_\_THE

# ITCHELL FIRM TRIAL ATTORNEYS

April 12, 2021

VIA PROCESS SERVER

The McClatchy Company, LLC d/b/a Sun Herald

Attn: C.T. Corporation System

Registered Agent

645 Lakeland East Drive Suite 101

Flowood, MS 39232

To Whom It May Concern

Pursuant to Mississippi Code Section 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Robert Lee Lett, III's, written notice in compliance with the Code.

On, or about December 8, 2020, you, The McClatchy Company, LLC, whose assets are owned by Chatham Asset Management, ILC, and for whom Blake Kaplan serves as your Executive Editor and General Manager, printed and published in mass a fictitious and defamatory advertisement or article within your daily Mississippi Gulf Coast newspaper, the Sun Herold. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, funder the "Announcements" heading in the Classifieds section, and under the subheadings; "Misc. Announcements" and "Health Notification." This advertisement was further reprinted in a separate print edition of the Sun Herold on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain, but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Robert Lec Lett as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing. These statements are false, Specifically, the following statements from the advertisement are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT... ROBERT LEE LETT 39 of MOSS POINT (NOTIFIED 12-7-2020)..."

Case: 30Ch: 21-CV-00135-DH Document#32-5 Filed: 02/02/2022 Page 65 of 283

Per a December 2020 phone call between Plaintiff and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

# 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defarmatory statement, undermining Plaintiff's credibility.

### 3. "39"

Plaintiff is 35 years old. DOB: 6/16/1985. This identifier is false, but not necessarily defamatory.

# 4. "mshealthdept@mail.com"

The MSDH email address published in the Sun Herald does not exist. Further, email addresses for United States' government entities end in ".gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

While this advertisement does not list Plaintiff's entire legal name, correct age, or current place of residence, based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this advertisement as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and ridiculed Plaintiff regarding the defamatory statements.

By printing and disseminating an advertisement of this nature, journalism standards and ethics for accuracy and truth in reporting were violated, as well as internal policies and procedures. This advertisement was blatantly false on its face and should have been intercepted by your editing department at The McClatchy Company, LLC, or by Blake Kaplan through simple review. Both you and Blake Kaplan utterly failed in this regard, neglecting your editorial duties. As owner of The McClatchy Company, LLC, Chatham Asset Management, LLC is also vicatiously liable.

Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for both your company's and employees' actions, or lack thereof, is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was woefully inadequate and extremely short in duration to suffice. This response should have been as loud and as powerful as your initial actions when you and Blake Kaplan first defamed Robert Lee Lett, III.

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# Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 246 of 387

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Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought. The Mitchell Firm's counsel in this case. Should any questions or concerns arise regarding this matter, feel free to contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020)

THE MITCHELL FIRM, PLLC

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Enclosures

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# Defamatory Advertisement



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# CLARIFICATIONS CORRECTIONS AND

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Page 69 of 203

VIA PROCESS SERVEF



April:12,-2021-

The McClatchy Company, LLC d/b/a Sun Herald

Atm: C.T. Corporation System

Registered Agent

645 Lakeland East Drive Suite 101,

Flowood, MS 39232

To Whom It May Concern,

Pursuant to Mississippi Code Section 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Charles Lamont Fountain's written notice in compliance with the Code.

On, or about December 8, 2020, you, The McClatchy Company, LLC, whose assets are owned by Chatham Asset Management, LLC, and for whom Blake Kaplan serves as your Executive Editor and General Manager, printed and published in mass a fictitious and defamatory advertisement or article within your daily Mississippi Gulf Coast newspaper, the Sun Henild. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, under the "Announcements" heading in the Classified section, and under the subheadings: "Misc. Announcements" and "Health Notification." This advertisement was further reprinted in a separate print edition of the Sun Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain, but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Charles Lamont Fountain as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing. Based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this advertisement as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and tidiculed Plaintiff regarding the defamatory statements. However, these statements are false. Specifically, the following statements from the advertisement are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT... CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA (NOTIFIED 12-7-2020)...."

Per a December 2020 phone call between Plaintiff's family member and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

# 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

# 3. "mshealthdept@mail.com"

The MSDH email address published in the Sun Herold does not exist. Further, email addresses for United States' government entities end in ".gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

By printing and disseminating an advertisement of this nature, journalism standards and ethics for accuracy and truth in reporting were violated, as well as internal policies and procedures. This advertisement was blatantly false on its face and should have been intercepted by your editing department at The McClatchy Company, LLC, or by Blake Kaplan through simple review. Both you and Blake Kaplan utterly failed in this regard, neglecting your editorial duties. As owner of The McClatchy Company, LLC, Chatham Asset Management, LLC is also vicariously liable.

Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for both your company's and employees' actions, or lack thereof, is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was worfully inadequate and extremely short in duration to suffice. This response should have been as loud and as powerful as your initial actions when you and Blake Kaplan first defamed Charles Lamont Fountain.

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# Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 251 of 387

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Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought The Mitchell Firm's counsel in this case. Should any questions or concerns arise regarding this matter, feel free to contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020)

THE MITCHELL FIRM, PLLC

/klk Enclosures

Page 3

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# **Defamatory Advertisement**



Page4

Me

#### Retraction

## CORRECTIONS AND CLARIFICATIONS

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-PICATION." The Sun Herald has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The San Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the error.

See an error or another problem with content in this edition? Report it by going to sunherald.com /customer-service or by calling 1-888-905-2036. To report delivery or account Issues, call 800-346-2472.

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#### PROOF OF SERVICE - MISS. CODE § 95-1-5 NOTICE

Mr. Blake Kaplan 1629 Springridge Road Gautier, MS 39553

I, the undersigned process server, served the requisite Min. Code f. 95-1-5 Notice upon the person or entity named above in the manner set forth below (process server must check proper space and provide all additional information that is requested and pertinent to the mode of service used):

- () PIRST CLASS MAIL AND ACKNOWLEDGMENT OF SERVICE. By mailing (by first class mail, postage prepaid), on the date stated in the attached Notice, copies to the person served, together with copies of the form of notice and acknowledgment and return envelope, postage prepaid, addressed to the sender (Attach completed acknowledgment of receipt pursuant to M.R.C.P. Form 1B).
- (X) PERSONAL SERVICE. I personally delivered copies of the Notice on the <u>12</u> day of April, 2021, to <u>Blake Kaplan</u>, where I found said person(s) in <u>The free</u> County of the State of Mississippi.
- () CERTIFIED MAIL SERVICE. By mailing to an address outside Mississippi (by first class mail, postage prepaid, requiring a return receipt) copies to the person served. (Attach signed return receipt or other evidence of actual delivery to the person served).

At the time of the service I was at least 18 years of age and not a party to this action.

Fee for service: \$ 50.00

Process server must list below (Please print or type)

Name: KobeRt L B. locker Address: 17209 (F MAII RE

Telephone: 728-990-8448

STATE OF MISSISSIPPI COUNTY OF Jakson

And the State and county aforesaid, and states on oath, upon first being duly sworn by me, that the matters and facts set forth in the foregoing "Proof of Service-Miss. Code § 95-1-5 Notice" are true and correct as therein stated.

Process Server (Signature)

Sworn as Manual Carted before me this the Andrew day of April, 2021.

MOTARY PUBLIC ID No. 80254 Commission Explana Fabruary 11, 2023

Notary Public



April 12; 2021

VIA PROCESS SERVER

Mr. Blake Kaplan 1629 Springridge Road Gaurier, MS 39553

Mr. Kaplan

Pursuant to Mississippi Code Section 95-1-5 prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defainatory. This letter serves as Plaintiff, Robert Lee Lett, III's, written notice in compliance with the Code.

On, or about December 8, 2020, you, Blake Kaplan, individually and as Executive Editor and General Manager of The McClatchy Company, LLC, whose assets are owned by Chatham Asset Management, LLC, printed and published in mass a fictitious and defamatory advertisement or article within the daily Mississippi Gulf Coast newspaper, the Sun Herald. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, under the "Announcements" heading in the Classifieds section, and under the subheadings: "Misc. Announcements" and "Health Notification." This advertisement was further re-printed in a separate print edition of the Sun Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Robert Lee Lett as having been reported as coming into contact with an STD/HIV positive person or persons, and to report to the nearby health department for testing. These statements are false. Specifically, the following statements from the advertisement are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT... ROBERT LEE LETT 39 of MOSS POINT (NOTIFIED 12-7-2020)...."

Per a December 2020 phone call between Plaintiff and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

#### 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

#### 3. "39"

Plaintiff is 35 years old. DOB: 6/16/1985. This identifier is false, but not necessarily defamatory.

#### 4. "mshealthdept@mail.com"

The MSDH email address published in the Sun Herald does not exist. Further, email addresses for United States' government entities end in "gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

While this advertisement does not list Plaintiff's entire legal name, correct age, or current place of residence, based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this advertisement as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and ridiculed Plaintiff regarding the defamatory statements.

By printing and disseminating an advertisement of this nature, you violated journalism standards and ethics for accuracy and truth in reporting, as well as internal policies and procedures. This advertisement was blatantly false on its face and should have been intercepted by you or the editing department at The McClatchy Company, LLC through simple review. You utterly failed in this regard however, neglecting your editorial duties. As owner of the Sun Herald, both The McClatchy Company, LLC and Chatham Asset Management, LLC are also vicariously liable.

Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for your actions, or lack thereof, is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was woefully inadequate and extremely short in duration to suffice. Your response should have been as loud and as powerful as your initial actions when you first defamed Robert Lee Lett, III.

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Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought The Mitchell Firm's counsel. Should any questions or concerns arise regarding this matter, please contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020) THE MITCHELL FIRM, PLLC

/klk Enclosures

Page 3

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#### **Defamatory Advertisement**



Mi

#### Retraction

## CORRECTIONS AND

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-PICATION." The Sun Herald has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The Sun Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the error.

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Mr. Blake Kaplan
1629 Springridge Road
Gautier, MS 39553

Mr. Kaplan,

Pursuant to Mississippi Code Section 95-1-5, prior to filing a libel complaint against any newspaper domiciled and published in the state, or authorized to do business within, a plaintiff shall serve notice in writing on the defendant at its regular place of business, at least ten (10) days before instituting any such action, specifying the article and the statements therein, which he alleges to be false and defamatory. This letter serves as Plaintiff, Charles Lamont Fountain's written notice in compliance with the Code:

On, or about December 8, 2020, you, Blake Kaplan, individually and as Executive Editor and General Manager of The McClatchy Company, LLC, whose assets are owned by Chatham Asset Management, LLC, printed and published in mass a fictitious and defamatory advertisement or article within the daily Mississippi Gulf Coast newspaper, the Sun Herald. This advertisement was published both in print and digital (online) format. Specifically, it was located on page "4B" of the print edition, under the "Announcements" heading in the Classifieds section, and under the subheadings: "Misc. Announcements" and "Health Notification." This advertisement was further re-printed in a separate print edition of the Sun Herald on page "6B," on, or about December 9, 2020. Dates of online publication are uncertain but assumed to have occurred on, or about December 7, 2020 through December 10, 2020.

Enclosed herein, this advertisement names Charles Lamont Fountain as having been reported as coming into contact with an STD/HIV positive person of persons, and to report to the nearby health department for testing. Based on the information provided, Plaintiff along with other members of the Mississippi Gulf Coast community have reasonably understood this advertisement as intending to refer to Plaintiff. In fact, numerous friends, family members, and strangers via social media questioned and ridiculed Plaintiff regarding the defamatory statements. However, these statements are false. Specifically, the following statements from the advertisement are false and defamatory in nature as it relates to Plaintiff:

1. "Health Dept. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been reported of having contact with positive person(s) REPORT TO NEARBY-HEALTH DEPT... CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA (NOTIFIED 12-7-2020)...."

Per a December 2020 phone call between Plaintiff's family member and the Mississippi State Department of Health ("MSDH"), the health department has not been notified to contact Plaintiff for alleged contact with a STD/HIV positive person or persons, nor did MSDH request or notify Plaintiff to report to the nearby health department on December 7, 2020 or at any time as it relates to this matter. Moreover, Plaintiff is not STD/HIV positive, nor has he had sexual relations with a STD/HIV positive person or persons as the advertisement unmistakably portrays or as Plaintiff reasonably understood the statement to mean.

#### 2. "www.msdhs.com"

The correct website for the MSDH is www.msdh.ms.gov. The MSDH website address published in the Sun Herald does not exist. Use of an alleged government entity website address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

#### 3. "mshealthdept@mail.com"

The MSDH email address published in the Sun Herald does not exist. Further, email addresses for United States' government entities end in ".gov." Use of an alleged government entity email address attempts to create a sense of authority and validity for the defamatory statement, undermining Plaintiff's credibility.

By printing and disseminating an advertisement of this nature, you violated journalism standards and ethics for accuracy and truth in reporting, as well as internal policies and procedures. This advertisement was blatantly false on its face and should have been intercepted by you or the editing department at The McClatchy Company, LLC through simple review. You utterly failed in this regard, neglecting your editorial duties. As owner of the Sun Herald, both The McClatchy Company, LLC and Chatham Asset Management, LLC are also vicatiously liable.

Due to the egregious nature of this false information, a full retraction and public apology expressing remorse and taking responsibility for your actions or lack thereof is warranted. The retraction published in print on, or about December 11, 2020, and enclosed herein, was woefully inadequate and extremely short in duration to suffice. Your response should have been as loud and as powerful as your initial actions when you first defamed Charles Lamont Fountain.

Nonetheless, due to the vast exposure this falsity has already received, a full retraction and public apology cannot and will not lessen the damage wreaked upon Plaintiff's reputation within the community; nor will it rectify the emotional and monetary harm caused. As such, Plaintiff has sought The Mitchell Firm's counsel. Should any questions or concerns arise regarding this matter, please contact the firm at (769) 300-0462.

Sincerely,

Jesse Mitchell, III (MS Bar No. 103020)

THE MITCHELL FIRM, PLLC

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Filedt: 02/201/2012

Page 732 of 2013

#### **Defamatory Advertisement**



Filed: 02/04/2021 Page 73 of 263

#### Retraction

## CORRECTIONS AND CLARIFICATIONS

On Dec. 8, 2020, the Sun Herald published a classified advertisement entitled "HEALTH NOTI-FICATION." The Sun Herald has learned that the health department did not forward the advertisement to the newspaper, and it should not have been published. The Sun Herald retracts all the statements in the advertisement, including the identities of the three individuals named. The Sun Herald regrets the error,

See an error or another problem with content in this edition? Report it by going to sunherald.com /customer-service or by ealling 1-888-905-2036. To report delivery or account issues, call 800-346-2472.

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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND **CHARLES FOUNTAIN** 

**PLAINTIFFS** 

CIVIL ACTION NO.

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

DEFENDANTS

#### SUMMONS

THE STATE OF MISSISSIPPI COUNTY OF JACKSON

TO: THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD ATTN: C.T. CORPORATION SYSTEM 645 LAKELAND EAST DRIVE, SUITE 101 **FLOWOOD, MS 39232** 

#### NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. You are required to mail or hand-deliver a copy of a written response to the Complaint to Jesse Mirchell, III, Esq., the attorney for the Plaintiffs, whose mailing address is: The Mitchell Firm, PLLC, 1062 Highland Colony Parkway, Suite 150, Ridgeland, Mississippi, Telephone: (769)300-0462, Facsimile: (601) 510-1981.

YOUR RESPONSE MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THIS SUMMONS AND COMPLAINT OR A JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

CIVIL ACTION NO.

21-135(3)

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

#### **SUMMONS**

THE STATE OF MISSISSIPPI COUNTY OF JACKSON

TO: CHATHAM ASSET MANAGEMENT, LLC 26 MAIN STREET, SUITE 204 CHATHAM, NJ 07928

#### **NOTICE TO DEFENDANT(S)**

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. You are required to mail or hand-deliver a copy of a written response to the Complaint to Jesse Mitchell, III, Esq., the attorney for the Plaintiffs, whose mailing address is: The Mitchell Firm, PLLC, 1062 Highland Colony Parkway, Suite 150, Ridgeland, Mississippi, Telephone: (769)300-0462, Facsimile: (601) 510-1981.

YOUR RESPONSE MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THIS SUMMONS AND COMPLAINT OR A JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

ISSUED under my hand and seal of said Court, this the

JACKSON COUNTY CLERK

Case: 39.0166/192100136135-DIPOCEDENTIFICATION FINE HOURS AND PROPERTY OF 203

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND **CHARLES FOUNTAIN** 

PLAINTIFFS

v.

CIVIL ACTION NO.

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

DEFENDANTS

#### **SUMMONS**

THE STATE OF MISSISSIPPI **COUNTY OF JACKSON** 

TO: BLAKE KAPLAN 1629 SPRINGRIDGE ROAD **GAUTIER. MISSISSIPPI 39553** 

#### NOTICE TO DEFENDANT(S)

THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. You are required to mail or hand-deliver a copy of a written response to the Complaint to Jesse Mitchell, III, Esq., the attorney for the Plaintiffs, whose mailing address is: The Mitchell Firm, PLLC, 1062 Highland Colony Parkway, Suite 150, Ridgeland, Mississippi, Telephone: (769)300-0462, Facsimile: (601) 510-1981.

YOUR RESPONSE MUST BE MAILED OR DELIVERED WITHIN THIRTY (30) DAYS FROM THE DATE OF DELIVERY OF THIS SUMMONS AND COMPLAINT OR A JUDGMENT BY DEFAULT WILL BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. You must also file the original of your response with the Clerk of this Court within a reasonable time afterward.

ISSUED under my hand and seal of said Court, this the H day of HNGUST, 2021.

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION OF DEFENDANT BLAKE KAPLAN

COMES NOW Defendant Blake Kaplan pursuant to Mississippi Rule of Civil Procedure 12 and files this his motion to dismiss the Complaint on the grounds of improper venue and failure to state a claim upon which relief can be granted.

Defendant Blake Kaplan therefore moves to dismiss the Complaint filed by Plaintiffs.

RESPECTFULLY SUBMITTED this the 15th day of September, 2021.

#### **BLAKE KAPLAN**

By:

s/ Henry Laird

**HENRY LAIRD** 

#### OF COUNSEL:

Henry Laird (MSB#1774)
WISE CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

Case; a 39.C36; C1.C21.QQ1.36; D35-D1D0c@oenn#er87#16 FTF6dd02914810221 PR9892 of 203

#### CERTIFICATE OF SERVICE

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 15th day of September, 2021.

s/ Henry Laird	
HENRY LAIRD	

#### OF COUNSEL:

Henry Laird (MSB#1774)
WISE CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# MOTION OF DEFENDANT BLAKE KAPLAN FOR TIME TO SUBMIT AFFIDAVITS AND BRIEF IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION TO DISMISS

COMES NOW Defendant Blake Kaplan and files this his motion for thirty days time in which to file affidavits and a memorandum brief in support of his Mississippi Rule of Civil Procedure 12 Motion to Dismiss.

RESPECTFULLY SUBMITTED this the 15th day of September, 2021.

#### **BLAKE KAPLAN**

By: s

s/ Henry Laird

HENRY LAIRD

#### OF COUNSEL:

Henry Laird (MSB#1774)
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

Case: 30 Gh: 21-24-00165135-DHDocpment #137:17 Filled 0292152021 Pagges of 203

#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 15th day of September, 2021.

s/ Henry Laird HENRY LAIRD

#### OF COUNSEL:

Henry Laird (MSB#1774)
WISE CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

Case: 30.01-21-24-00-1651951 DI-Pocumentén87:18 Filed: 02921522021 Plages7 of 203

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### MOTION FOR TIME OF DEFENDANT THE McCLATCHY COMPANY, LLC

COMES NOW Defendant The McClatchy Company, LLC, and files this its motion for thirty additional days time from September 17, 2021 in which to plead, answer, or otherwise defend the Complaint filed by Plaintiff, including but not limited to all affirmative defenses, including Mississippi Rule of Civil Procedure 12 defenses.

RESPECTFULLY SUBMITTED this the 15th day of September, 2021.

THE McCLATCHY COMPANY, LLC, a Delaware limited liability company

By: <u>s/</u>

s/ Henry Laird HENRY LAIRD

#### OF COUNSEL:

Henry Laird (MSB#1774)
Wise Carter Child & Caraway, P.A.
2510 14th Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

#### **CERTIFICATE OF SERVICE**

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Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 15th day of September, 2021.

s/ Henry Laird HENRY LAIRD

#### OF COUNSEL:

Henry Laird (MSB#1774)
Wise CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

Case: 30C11:21-cy-00135135-Dt-Pochmentitin 27:19 Filmed: 02424722221 Plage 89 of 203

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

## MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION OF DEFENDANT CHATHAM ASSET MANAGEMENT, LLC

COMES NOW Defendant Chatham Asset Management, LLC pursuant to Mississippi Rule of Civil Procedure 12 and files this motion to dismiss the Complaint on the grounds of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process and failure to state a claim upon which relief can be granted.

Defendant Chatham Asset Management, LLC therefore moves to dismiss the Complaint filed by Plaintiffs.

RESPECTFULLY SUBMITTED this the 17th day of September, 2021.

CHATHAM ASSET MANAGEMENT, LLC

By:

s/ Henry Laird

**HENRY LAIRD** 

OF COUNSEL:

Henry Laird (MSB#1774)
WISE CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

Case: 30.516:1-24-00185195-DHDOCOMENTA #19 Filled 1.02421722021 Pagge02 of 203

#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 17th day of September, 2021.

s/ Henry Laird	
HENRY LAIRD	

#### OF COUNSEL:

Henry Laird (MSB#1774)
Wise CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

MOTION OF DEFENDANT CHATHAM ASSET MANAGEMENT, LLC FOR TIME TO SUBMIT AFFIDAVITS AND BRIEF IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION TO DISMISS

COMES NOW Defendant Chatham Asset Management, LLC and files this motion for thirty days time in which to file affidavits and a memorandum brief in support of his Mississippi Rule of Civil Procedure 12 Motion to Dismiss.

RESPECTFULLY SUBMITTED this the 17th day of September, 2021.

CHATHAM ASSET MANAGEMENT, LLC

By: <u>s/ Henry Laird</u> HENRY LAIRD

#### **OF COUNSEL:**

Henry Laird (MSB#1774)
WISE CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

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#### CERTIFICATE OF SERVICE

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 17th day of September, 2021.

s/ Henry Laird HENRY LAIRD

#### OF COUNSEL:

Henry Laird (MSB#1774)
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### AFFIDAVIT OF HENRY LAIRD

#### STATE OF MISSISSIPPI COUNTY OF HARRISON

- I, Henry Laird, make this Affidavit as follows:
- 1. I am the attorney for Defendants, Chatham Asset Management, LLC; The McClatchy Company, LLC; and Blake Kaplan.
  - 2. I make this Affidavit upon personal knowledge.
  - 3. As attorney for Defendants, I have filed the following pleadings:
    - [Doc. #6] Mississippi Rule of Civil Procedure 12 Motion of Defendant Blake Kaplan filed on September 15, 2021;
    - [Doc. #7] Motion of Defendant Blake Kaplan for Time to Submit Affidavits and brief in Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss filed on September 15, 2021;
    - [Doc. #8] Motion for Time of Defendant The McClatchy Company, LLC filed on September 15, 2021;
    - [Doc. #9] Mississippi Rule of Civil Procedure 12 Motion of Defendant Chatham Asset Management, LLC filed on September 17, 2021; and
    - [Doc. #10] Motion of Defendant Chatham Asset Management, LLC for Time to Submit Affidavits and brief in Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss filed on September 17, 2021.

- 4. I need thirty (30) days additional time until October18, 2021 in which to answer or otherwise defend the Complaint against Defendant, The McClatchy Company, LLC; to brief the motion to dismiss in favor of Defendant Chatham Asset Management, LLC with supporting affidavit/affidavits; and to brief the motion to dismiss of Defendant Blake Kaplan with supporting affidavit/affidavits.
- 5. The Complaint was filed by Plaintiffs on August 9, 2021; I have been recently retained to represent all three Defendants in this litigation; and I need the requested additional time to adequately represent the Defendants' interests. I cannot do so without the obtaining the additional time.
- 6. A representative of one of the Defendants with whom undersigned counsel is working to defend the Complaint is out of the country until on or about September 27, 2021; I need time to prepare affidavits in support of the two motions to dismiss; and I need time to research the facts of the case and analyze the law to adequately prepare briefs supporting the two motions to dismiss.
- 7. Counsel for Plaintiffs and I are trying to reach agreement on the wording of agreed orders for additional time.

HENRY I AIRD

SWORN TO AND SUBSCRIBED before me, this the 17th day of September, 2021.

Notary Public

NOTARY PUBLIC
ID No. 46191
Commission Expire
November 12, 2022

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COF MISS

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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

DEFENDANTS

#### **NOTICE OF HEARING**

Please take notice that Defendants, Blake Kaplan and Chatham Asset Management, LLC, will bring their Mississippi Rule of Civil Procedure 12 Motions to Dismiss [Doc. # 6 and 9, respectively] on for hearing before the Honorable Dale Harkey, in the Circuit Court of Jackson County, located at 3104 Magnolia Street, Pascagoula, Mississippi at 1:30 p.m. on Friday, November 12, 2021 or as soon as counsel may be heard.

Respectfully submitted, this the 22nd day of September, 2021.

CHATHAM ASSET MANAGEMENT, LLC; and BLAKE KAPLAN

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <u>hfl@wisecarter.com</u>

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Telephone: 228/867-7141

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#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorneys for Plaintiff

This the 22nd day of September, 2021.

s/ Henry Laird Henry Laird

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125 Gulfport, MS 39501

Telephone: 228/867-7141

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## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN	SEP 28		PLAINTIFFS	
V <sub>•</sub> .	ВУ	CIVIL ACTION NO. 300	CI1:21-cv-00135-DH	
CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12 DEFENDANTS				
ORDER GRANTING MOTION FOR TIME				

ON Mississippi Rule of Civil Procedure 12 Motion to Dismiss of Defendant Chatham Asset Management, LLC [Doc. #9] and Motion of Defendant Chatham Asset Management, LLC for Time to Submit Affidavits and Brief In Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss [Doc. #10] the Court finds that the motion for time is well taken and should be granted.

The Court finds that Plaintiffs want to propound discovery to Defendant Chatham Asset Management, LLC to be responded to prior to the hearing on its Rule 12 motion to dismiss, to which Chatham Asset Management, LLC objects unless the Court first enters an order finding that answering the objected to discovery to prepare Plaintiffs for the motion to dismiss hearing does not constitute a waiver by Chatham Asset Management, LLC of any of its Rule 12(b) grounds. It is therefore

ORDERED AND ADJUDGED that Defendant Chatham Asset Management, LLC must respond to discovery requests from Plaintiffs to prepare them for the upcoming hearing on Chatham Asset Management, LLC's motion to dismiss; and that responding to discovery from Plaintiffs (including any specific objections) does not constitute a waiver

by Chatham Asset Management, LLC of any of its Rule 12(b) grounds for dismissal. It is further

ORDERED AND ADJUDGED that Chatham Asset Management, LLC has until October 18, 2021 to file a brief and/or file affidavits supporting its Motion to Dismiss [Doc. #9]; and Plaintiffs will have thirty (30) days from being served with the brief to respond; and thereafter the Ghatham Asset Management, LLC will have five days to serve any rebuttal brief.

ORDERED AND ADJUDGED this the \_\_\_\_\_\_\_day of September, 2021

CIRCUIT COURT JUDGE

AGREED:

Jessie Mitchell, III Counsel for Plaintiffs

The Mitchell Firm, PLLC

1062 Highland Colony Parkway, Ste. 150

Ridgeland, MS 39157

Telephone: 769/300-0462

Email:--imitchel@tmflegal.com

Henry Laild

Counsel for Defendents

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Prepared by:

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Case: 309/1671-24-60-136-951DHDogwood #1677-14 File to 202/202021 Page 99 of 203

#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### AFFIDAVIT OF James Ruggerio, Jr.

STATE OF NEW JERSEY COUNTY OF MORRIS

- I, James Ruggerio, Jr., declare as follows:
- 1. I am over 18 years of age and am competent to make this Affidavit. I have personal knowledge of the facts stated herein, and they are true and correct to the best of my knowledge, information, and belief.
- 2. I am the Chief Operating Officer for the Defendant, Chatham Asset Management, LLC ("Chatham, LLC").
- 3. Chatham, LLC is a Delaware limited liability company with its principal place of business in Chatham, New Jersey.
- 4. Chatham, LLC does not do business in Mississippi. It is not registered to do business in Mississippi. Chatham, LLC does not maintain an office in Mississippi, does not maintain any bank accounts in Mississippi, does not own, use or possess any real property in Mississippi, and does not have any employees in Mississippi.

- 5. Chatham, LLC and The McClatchy Company, LLC. ("McClatchy, LLC") are separate limited liability companies. McClatchy, LLC is a Delaware limited liability compay with its principal office in Sacramento, California. McClatchy, LLC publishes the Sun Herald newspaper in Gulfport, Mississippi.
- 6. Chatham, LLC and McClatchy, LLC each keep separate company books, financial records and bank accounts. McClatchy, LLC files separate state tax returns and has its own Employer Identification Number; pays its own rent and expenses; purchases and owns its supplies, fixtures and furniture; hires and fires its own personnel; maintains all permits and licenses in its own name; runs its offices in Gulfport, Mississippi and is free of editorial control by Chatham, LLC. McClatchy does not enter into contracts on behalf of Chatham, LLC.
- 7. McClatchy, LLC is 100% owned by SIJ Intermediate, LLC. SIJ Intermediate, LLC is 100% owned by SIJ Holdings, LLC. SIJ Holdings, LLC is 100% owned by SIJ Parent Holdings, LLC. SIJ Parent Holdings, LLC is 100% owned by Chatham, LLC. These entities have no say in the newsroom or classified ads operations of any of the newspapers owned by Chatham, LLC.
- 8. Chatham, LLC does not control personnel decisions made with regard to McClatchy, LLC employees, including Defendant Blake Kaplan.
- 9. Chatham, LLC plays no part in the preparation of the news or classified ads published in the *Sun Herald* newspaper, including but not limited to the classified ad involved in this case.

[Remainder of this page intentionally left blank]

#### 

James Ruggerio, Jr., Chief Operating Officer

SWORN TO AND SUBSCRIBED before me, this the 17th day of September, 2021.

Notary Public

PETER ZDAZENSKI
NOTARY PUBLIC OF NEW JERSEY
Commun. 5905-1569
My Commission Expires 2210/2022

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## IN THE CIRCUIT COURT OF THE KSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

OCT U 4 2021 KAINDY CAKINEY CLERK

**PLAINTIFFS** 

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CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### ORDER GRANTING MOTION FOR TIME

ON Mississippi Rule of Civil Procedure 12 Motion to Dismiss of Defendant Blake Kaplan [Doc. #6] and Motion of Defendant Blake Kaplan for Time to Submit Affidavits and Brief in Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss [Doc. #7] the Court finds that the motion for time is well taken and should be granted.

The Court finds that Plaintiffs want to propound discovery to Defendant Blake Kaplan to be responded to prior to the hearing on his Rule 12 motion to dismiss, to which Blake Kaplan objects unless the Court first enters an order finding that answering the objected to discovery to prepare Plaintiffs for the motion to dismiss hearing does not constitute a walver by Blake Kaplan of any of his Rule 12(b) grounds. It is therefore

ORDERED AND ADJUDGED that Defendant Blake Kaplan must respond to discovery requests from Plaintiffs to prepare them for the upcoming hearing on Blake Kaplan's motion to dismiss; and that responding to discovery from Plaintiffs (including any specific objections) does not constitute a waiver by Blake Kaplan of any of his Rule 12(b) grounds for dismissal. It is further

ORDERED AND ADJUDGED that Blake Kaplan has until October 18, 2021 to file a brief and/or file affidavits supporting his Motion to Dismiss [Doc. #6]; and Plaintiffs will have thirty (30) days from being served with the brief to respond; and thereafter the Blake Kaplan will have five days to serve any rebuttal brief.

ORDERED AND ADJUDGED this the ...

day of September, 2021

CIRCUIT COURT JUDGE

AGREED:

Jessie Mitchell, III Counsel for Plaintiffs The Mitchell Firm, PLLC

1062 Highland Colony Parkway, Ste. 150

Ridgeland, MS 39157 Telephone: 769/300-0462

Email: jmitchell@tmflegal.com

Henry Land

Counsel for Defendants

Wise Carter

2150 14th Street, Ste. 1125

Gulfport, MS 39501 Telephone: 228/867-7141 Email: hfi@wisecarter.com

Prepared by:

Henry Laird (MSB#1774) WISE CARTER CHILD & CARAWAY, P.A. 2510 14th Street, Sulte 1125 Gulfport, Mississippi 39501 Telephone: (228) 867-7141 hfl@wisecarter.com

### IN THE CIRCUIT COURT OF THE KSON COUNTY, MISSISSIPPI

ROBERT LETT, III and	UL1 0 4 ZUZI			
CHARLES FOUNTAIN	RANDY CARNEY, CLE	rk <b>Plaintiffs</b>		
Ve	BY			
CHATHAM ASSET MAI THE McCLATCHY CON d/b/a/ SUN HERALD; B and JOHN DOES 1-12	PANY, LLC	DEFENDANTS		
ORDER GRANTING MOTION FOR TIME				

ON Motion for Time of Defendant The McClatchy Company, LLC to Answer Complaint [Doc. #8] the Court finds that the motion for time is well taken and should be granted.

The Court finds that Plaintiffs want to propound discovery to Defendant The McClatchy Company, LLC to be responded to prior to the hearing on any Rule 12 motion to dismiss it will file, to which The McClatchy Company, LLC objects unless the Court first enters an order finding that answering the objected to discovery to prepare Plaintiffs for The McClatchy Company, LLC's motion to dismiss hearing does not constitute a walver by The McClatchy Company, LLC of any of its Rule 12(b) grounds. It is therefore

ORDERED AND ADJUDGED that Defendant The McClatchy Company, LLC must respond to discovery requests from Plaintiffs to prepare them for a upcoming hearing on The McClatchy Company, LLC's motion to dismiss; and that responding to discovery from Plaintiffs (including any specific objections) does not constitute a waiver by The McClatchy Company, LLC of any of its Rule 12(b) grounds for dismissal.

ORDERED AND ADJUDGED that The McClatchy Company, LLC has until October 18, 2021 to answer or otherwise defend the Complaint [Doc. #2], including but not limited to filing a Mississippi Rule of Civil Procedure 12 Motion to Dismiss; and Plaintiffs will have thirty (30) days from being served with the Rule 12 motion to respond; and thereafter the McClatchy Company, LLC will have five days to serve any rebuttal brief.

ORDERED AND ADJUDGED this the

day of <del>Septembe</del>r, 2021

CIRCUIT COURT JUDGE

**AGREED:** 

Jessie Mitchell, III

Counsel for Plaintiffs
The Mitchell Firm, PLLC

1062 Highland Colony Parkway, Ste. 150

Ridgeland, MS 39157 Telephone: 769/300-0462

Email:-jmilchell@tmflegel.com.-

Henry Laird Counsel for Defendants

Wise Carter

2150 14th Street, Ste. 1125

Gulfport, MS 39501

Telephone: 228/867-7141

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#### Prepared by:

Henry Laird (MSB#1774)
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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

## BRIEF OF CHATHAM ASSET MANAGEMENT, LLC IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12 MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

On August 9, 2021 Plaintiffs Robert Lett, III and Charles Fountain filed their Complaint alleging claims of defamation and false light invasion of privacy [Doc. #2].

On September 17, 2021 Defendant, Chatham Asset Management, LLC ("Chatham") filed its Motion to Dismiss [Doc. #9] on the following grounds: lack of jurisdiction over the person; improper venue; insufficiency of process; insufficiency of service of process; and failure to state a claim upon which relief can be granted.

Chatham's Motion to Dismiss is set for oral argument in Pascagoula, Mississippi on November 12, 2021 at 1:30 p.m. This brief is submitted to support that part of the motion grounded on lack of personal jurisdiction pursuant to Mississippi Rule of Civil Procedure 12(b)(2).

In their Complaint, Plaintiffs allege incorrectly that Chatham is a foreign corporation organized and existing pursuant to the laws of the State of New Jersey with its principal place of business at 26 Main Street, Suite 204, Chatham, New Jersey 07928.

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(Complaint, ¶ 3.) In fact, Chatham is a Delaware limited liability company with its principal place of business at the New Jersey address alleged.

At ¶ 9 of their Complaint, Plaintiffs incorrectly claim that personal jurisdiction is appropriate over Chatham, "the New Jersey based owner of Defendant, Sun Herald, by means of piercing the corporate veil".

At ¶ 46 of their Complaint, Plaintiffs allege the following classified ad was published by the Sun Herald on December 7, 2020:

Health Notification HEALTH DEPT. has been notified to contact 3 more alleged person(s) to be tested for STD/HIV due to person(s) been report of having contact with positive person(s) REPORT TO NEARBY HEALTH DEPT www.msdhs.com: NEAL RAINEY 38 of PASCAGOULA, CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA, ROBERT LEE LETT 39 of MOSS PONT (NOTIFIED 12-7-2020), 601-576-7400 mshealthdept@gmail.com

Nowhere in their Complaint do Plaintiffs allege any facts supporting the existence of any duty by Chatham to Plaintiffs nor any such duty which was breached by some act or omission of Chatham. Defendant Chatham has no connection whatsoever to the facts of this case as clearly set forth by James Ruggerio, Jr. in the following numbered paragraphs of his affidavit [Doc. #14]:

- 3. Chatham, LLC is a Delaware limited liability company with its principal place of business in Chatham, New Jersey.
- 4. Chatham, LLC does not do business in Mississippi. It is not registered to do business in Mississippi. Chatham does not maintain an office in Mississippi, does not maintain any bank accounts in Mississippi, does not own, use or possess any real property in Mississippi, and does not have any employees in Mississippi.
- 5. Chatham, LLC and The McClatchy Company, LLC ("McClatchy, LLC") are separate limited liability companies. McClatchy, LLC is a Delaware limited liability company with its principal office in

Case: 30.511:21:54:001351851D1Pocytosenhen87:17 Filentia: 21040802021 Pageoglos of 203

- Sacramento, California. McClatchy, LLC publishes the Sun Herald newspaper in Gulfport, Mississippi.
- 6. Chatham LLC and McClatchy, LLC each keep separate company books, financial records and bank accounts. McClatchy, LLC files separate state tax returns and has its own Employer Identification Number; pays its own rent and expenses; purchases and owns it supplies, fixtures and furniture; hires and fires its own personnel; maintains all permits and licenses in its own name; runs its offices in Gulfport, Mississippi and is free of editorial control by Chatham, LLC McClatchy does not enter into contracts on behalf of Chatham, LLC.
- 7. McClatchy, LLC is 100% owned by owned by SIJ Intermediate, LLC. SIJ Intermediate is 100% owned by SIJ Holdings, LLC. SIJ Holdings, LLC is 100% owned by SIJ Parent Holdings, LLC. SIJ Parent Holdings, LLC is 100% owned by Chatham, LLC. These entities have no say in the newsroom operations of any of the newspapers owned by McClatchy.
- 8. Chatham, LLC does not control personnel decisions made with regard to McClatchy, LLC employees, including Defendant Blake Kaplan.
- 9. Chatham, LLC plays no part in the preparation of the news or classification ads published in the *Sun Herald* newspaper, including but not limited to the classified ad involved in this case.

Since Chatham is a foreign limited liability company, Plaintiffs attempted to serve Chatham with process under Mississippi's long arm status at §13-3-57 Mississippi Code which provides:

Any nonresident person, firm, general or limited partnership, or any foreign or other corporation not qualified under the Constitution and laws of this state as to doing business herein, who shall make a contract with a resident of this state to be performed in whole or in part by any party in this state, or, or who shall commit a tort in whole or in part in this state against a resident or nonresident of this state, or who shall do any business or perform any character of work or service in this state, shall by such act or acts be deemed to be doing business in Mississippi and shall thereby be subjected to the jurisdiction of the courts of this state. Service of summons and process upon the defendant shall be had or made as is provided by the Mississippi Rules of Civil Procedure.

Any such cause of action against any such nonresident, in the event of death or inability to act for itself or himself, shall survive against the executor, administrator, receiver, trustee, or any other selected or appointed representative of such nonresident. Service of process or summons may be had or made upon such nonresident executor, administrator, receiver, trustee, or any other selected or appointed representative of such nonresident as is provided by the Mississippi Rules of Civil Procedure, and when such process or summons is served, made or had against the nonresident executor, administrator, receiver, trustee, or other selected or appointed representative of such nonresident it shall be deemed sufficient service of such summon or process to give any court in this state in which such action may be filed, in accordance with the provisions of the statutes of the State of Mississippi or the Mississippi Rules of Civil Procedure, jurisdiction over the cause of action and over such nonresident executor, administrator, receiver, trustee or other selected or appointed representative of such nonresident insofar as such cause of action is involved.

The provisions of this section shall likewise apply to any person who is a nonresident at the time any action nor proceeding is commenced against him even though said person was a resident at the time any action or proceeding accrued against him.

The Mississippi Supreme Court has had many occasions to determine this state's jurisdiction over nonresident defendants via the long-arm statute.

"The proper order when analyzing personal jurisdiction over nonresident defendants is to first consider whether the long-arm statute subjects a nonresident defendant to personal jurisdiction and then to consider whether the statute's application to that defendant offends the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution". *Estate of Jones v. Phillips*, 992 So. 2d 1131, 1137 (Miss. 2008), citing *Sorrells v. R&R Custom Coach Works, Inc.*, 636 So. 2d 661, 671 (Miss. 1994).

Plaintiffs bear the burden of establishing personal jurisdiction by *prima facie* evidence. The court considers affidavits, discovery, and oral testimony including any "uncontroverted allegations". *Long v. Vitkauskas*, 287 So. 3d 171, 178 (Miss. 2019).

"The threshold condition for application of the long-arm statute is the requirement that the nonresident corporation, over which personal jurisdiction is sought, is not a corporation [limited liability company] qualified to do business in this state". *Estate of Jones*, 1138, citing *Sorrels*, 671. McClatchy, LLC is a foreign (nonresident) limited liability company.

The next issue is whether the trial court's assertion of jurisdiction over the nonresident defendant under Mississippi's long-arm statute offends the Due Process Clause of Fourteenth Amendment. *Estate of Jones*, 1139. Due process requires "that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice'". *Estate of Jones*, 1139, citing *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

"Historically, minimum contacts have been split into two types: those which invoke specific jurisdiction over a defendant and those that lead to general jurisdiction over a defendant". Estate of Jones, 1140, citing Helicopteros Nacionales de Columbia S.A. v. Hall, 466 U.S. 408, 414-415, notes 8, 9.

Chatham does not have minimum contacts with Mississippi sufficient to allow this Court to exercise specific jurisdiction over it. See the Affidavit of James Ruggerio, Jr. [Doc. # 14.] As previously discussed in this brief, Chatham has engaged in no activities in this state from which Plaintiff's claims arise or to which those claims relate. Instead, Plaintiffs allege causes of action related to or arising from a classified ad published by Defendant McClatchy *Sun Herald* newspaper. Chatham has no employees within Mississippi, and it did not take or publish the ad. In light of these facts, Plaintiffs cannot

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establish Chatham has had sufficient minimum contacts with Mississippi upon which to base specific personal jurisdiction.

Plaintiffs likewise cannot establish that Chatham has undertaken continuous and systematic activities in Mississippi so as to warrant exercising general jurisdiction over it. "[W]hether a defendant is subject to general personal jurisdiction does not rest on 'whether a foreign corporation's in-forum contacts can be said to be in some sense continuous and systematic." Daimler AG v. Bauman, 571 U.S. 117, 139 (2014)). Rather, the "defendant's affiliations with the forum must be so systematic and continuous that they are rendered to be at home in the forum state." Daimler, 571 U.S. at 127 (emphasis added). "A corporate defendant is considered at home in its place of incorporation and its principal place of business." Daimler, 571 U.S. at 137 (emphasis added).

Plaintiffs' suit neither arises out of nor relates to any activity of Chatham in Mississippi. Chatham does not carry out business activities within Mississippi that are continuous or systematic so to render it at home in the state. Chatham is a Delaware limited liability company with its principal place of business in New Jersey. (Ruggerio Affidavit). Chatham is not registered to do business in Mississippi and does not do business in Mississippi. (Ruggerio Affidavit). Chatham's headquarters is in New Jersey, where Chatham business activities. directs and controls its (Ruggerio Affidavit). Moreover, Chatham owns no real property in Mississippi nor does it have any employees in Mississippi (Ruggerio Affidavit).

Nowhere in the Complaint do Plaintiffs articulate any specific act or omission which states a claim against Defendant Chatham. Due to Chatham's lack of minimum contacts to the State of Mississippi and due to Plaintiffs' failure to state any set of facts against

Chatham which would impose liability, the Plaintiffs seem to claim that Chatham is the agent or alter ego of McClatchy. As a matter of law that attempt should fail and the Complaint against Chatham be dismissed.

".... [A]bsent a sufficient allegation of particularized facts, judicial economy requires that the corporate veil should not be preliminarily pierced for long-arm jurisdiction on the mere unsubstantiated allegations in the pleadings". Canadian National Railway Co. v. Waltman, 94 So. 3d 1111, 1116 (Miss. 2012), citing with approval North American Plastics, Inc. v. Inland Shoe Mfg. Co., Inc. 592 F. Supp. 875, 879 (N.D. Miss. 1984).

In order for Plaintiffs to prove that Chatham is vicariously liable for the alleged torts of McClatchy and its employee, Defendant Blake Kaplan, or to prove that Chatham is the alter ego of McClatcy, the Complaint must allege facts indicating "(1) some frustration of expectations regarding the party to whom he looked for performance; (2) a flagrant disregard of corporate finalities by the defendant corporation and its principals; and (3) a demonstration of fraud or other equivalent misfeasance on the part of ...." Chatham. Canadian National Railway, 1116. Plaintiffs have not made any such allegations, nor can they according to Mr. Ruggerio's affidavit.

Piercing the corporate veil of a subsidiary to reach the parent corporation is not "lightly undertaken" by Mississippi courts. *Johnson v. Higgins*, 321 So. 2d at 285. "Courts do not take piercing the corporate veil lightly because of the chilling effect it has on corporate risk-taking." *Nash Plumbing, Inc. v. Shasco Wholesale Supply, Inc.*, 875 So. 2d 1077, 1082 (Miss. 2004).

Buchanan v. Ameristar Casino Vicksburg, Inc. 957 So. 2d 696, 978 (Miss. 2007).

Canadian National Railway also held:

A non-resident defendant may, on his pre-trial Rule 12(b)(2) motion to dismiss, litigate the inherent factual questions through the use of live testimony or affidavits.... If the court finds facts that sustain his defense, it

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should dismiss, as the presumption implicit in the well-pleaded allegations rule has "spent its forces and vanished."

Canadian National Railway, 111.

Affidavits contesting personal jurisdiction over nonresident limited liability companies, such as the Affidavit submitted by Mr. Ruggerio in this case, should be considered by the trial court early on. *R.C. Construction Company, Inc. v. National Office Systems, Inc.*, 622 So. 2d 1253, 1254 (Miss. 2012). "A non-resident defendant may, on his pre-trial Rule 12(b)(2) motion to dismiss, litigate the inherent factual questions through the use of live testimony or affidavits". *R.C. Construction Co., Inc.*, 1255.

#### CONCLUSION

For the reasons set forth, the Court should dismiss the Complaint pursuant to Mississippi Rule of Civil Procedure 12(b)(2) since as a matter of law, the Court lacks personal jurisdiction over Chatham.

RESPECTFULLY SUBMITTED this the 8th day of October. 2021.

CHATHAM ASSET MANAGEMENT, LLC

By:	s/ Henry Laird	
	HENRY LAIRD	

OF COUNSEL:

Henry Laird (MSB#1774)
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#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

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Email: jmitchell@tmflegal.com

Attorney for Plaintiff

SO CERTIFIED, this the 8th day of October, 2021.

s/ Henry Laird	
HENRY LAIRD	

#### **OF COUNSEL:**

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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

PLAINTIFFS

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

DEFENDANTS

#### AFFIDAVIT OF BLAKE KAPLAN

#### STATE OF MISSISSIPPI COUNTY OF HARRISON

I Blake Kaplan declare as follows:

- 1. I am over 18 years of age and am competent to make this Affidavit. I have personal knowledge of the facts stated herein, and they are true and correct to the best of my knowledge, information, and belief.
- 2. I have been an adult resident citizen of Gautier, Mississippi since before 2021.
- 3. From 2019 forward I have been a Regional Executive Editor for The McClatchy Company which later became The McClatchy Company, LLC. In that capacity, I am the Executive Editor of three newspapers owned by The McClatchy Company: the Sun Herald in Gulfport, Mississippi, The Telegraph in Macon, Georgia, and the Ledger-Enquirer in Columbus, Ga. I am also the general manger of the Sun Herald. I do not have GM duties at the Georgia properties.
- 4. As Regional Executive Editor my responsibilities are primarily news-related.

  I plan and strategize stories for each market and help edit the stories for fairness, spelling,

grammar, truthfulness and libel. At times, I take calls from customers primarily about delivery and billing issues at the three newspapers. I represent each market in company meetings and work to deliver the best possible news report for each paper. As general manager of the Sun Herald, I represent the paper at public events, take calls as an official representative of the paper and deal with physical building and maintenance issues. I have no responsibility for the paper's advertising department or its revenues. I also am not in charge of financial budgeting.

- 5. In the 2016-2017 timeframe The McClatchy Company and now The McClatchy Company, LLC had all of its newspapers, including the *Sun Herald* of Gulfport, Mississippi, go to a company-wide approach to classified advertising. Requests for classified advertising are currently processed two ways. A customer may access an online computer page, type in the ad and pay by credit card, or they can verbally give the ad to representatives who work in a Texas call center. Because of the pandemic, employees at the call center are working remotely and could be elsewhere than Texas.
- 6. The classified ad at the center of this lawsuit was placed through the online computer page and paid for with a credit card. It was done anonymously, and the company's efforts to track the credit card to a specific person have been unsuccessful. I did not see or review the ad in question, as this is not part of my job duties.
- 7. I have no day-to-day knowledge of what content appears in the classified advertising section of the *Sun Herald* newspaper since the advertising is processed either electronically or by remote workers outside Mississippi. This was the process in place at the time the ad ran in December 2020.

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- 8. It is not part of my responsibility to review, edit, or proof classified ads. I do not see them until they are published by the Sun Herald.
- 9. I knew nothing about the classified ad which is the subject of this litigation until after it was published and had no responsibility for accepting or publishing the classified ad which is the subject of this litigation.

SWORN TO AND SUBSCRIBED before the, this the HM day of Utoler.

KOTARY PUBLIC 10 No. 48191 Commission Expires SONCOUN

2021.

### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# DEFENDANT CHATHAM ASSET MANAGEMENT, LLC AND BLAKE KAPLAN'S NOTICE OF SERVICE

COME NOW Defendants, Chatham Asset Management, LLC and Blake Kaplan by and through counsel of record and give notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant Chatham Asset Management, LLC's Responses to Plaintiffs' First Set of Request for Admissions; and
- 2. Defendant Blake Kaplan's Responses to Plaintiffs' First Set of Request for Admissions.

Respectfully submitted, this the 13th day of October, 2021.

CHATHAM ASSET MANAGEMENT, LLC Defendant

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <u>hfl@wisecarter.com</u>

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Case: 30.011:21-64-001-35198-DI-POCHMENTHER 7:119 File # 021241202021 Page 9212 of 203

#### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

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Attorney for Plaintiffs

This the 13th day of October, 2021.

s/ Henry Laird

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125 Gulfport, MS 39501

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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and **CHARLES FOUNTAIN** 

**PLAINTIFFS** 

v.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

DEFENDANTS

#### DEFENDANT THE McCLATCHY COMPANY, LLC'S NOTICE OF SERVICE

COMES NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

1. Defendant The McClatchy Company, LLC's Responses to Plaintiffs' First Set of Request for Admissions.

Respectfully submitted, this the 14th day of October, 2021.

THE McCLATCHY COMPANY, LLC Defendant

BY:

s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774)

Email: <a href="https://https:

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#### **CERTIFICATE OF SERVICE**

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Email: jmitchell@tmflegal.com
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Attorney for Plaintiffs

This the 14th day of October, 2021.

s/ Henry Laird
----------------

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125 Gulfport, MS 39501

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# IN THE CIRCUIT COURT OF JACKSON COUNTY; MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# BRIEF OF DEFENDANT BLAKE KAPLAN IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12(b)(6) MOTION TO DISMISS

This brief is submitted in support of Defendant Blake Kaplan's ("Kaplan") Motion to Dismiss [Doc. #6] on failure to state a claim pursuant to Mississippi Rule of Civil Procedure 12(b)(6) and his supporting Affidavit [Doc. #18].

Plaintiffs filed their Complaint on August 9, 2021 [Doc. #2] alleging defamation and false light claims against Chatham Asset Management, LLC, The McClatchy Company, LLC, and Blake Kaplan.

In ¶ 5 of their Complaint, Plaintiffs allege that Blake Kaplan is an adult resident citizen of Jackson County, Mississippi and "At all times relevant, Kaplan was employed by Defendant, Sun Herald, and supervised, controlled, and/or managed Sun Herald's newspaper with facilities located at 2505 14th Street, Suite 400 Gulfport, MS 39501".

In ¶ 6, Plaintiffs allege that Kaplan "played a role in the publication of the libelous advertisement at issue in this complaint (the "advertisement"), failed to prevent the Advertisement's publication, and/or are generally liable to Plaintiffs as a result of the Advertisement's publication".

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At ¶ 15, Plaintiffs allege that Blake Kaplan acted individually and in his official capacity as General Manager and Executive Editor, and published defamatory classified ad.

At¶ 19 of the Complaint, Plaintiffs allege that ".... the Sun Herald, with Kaplan acting individually and in his official capacity as General Manager and Executive Editor, re-published in mass, both in print and in digital format, the same false and defamatory Advertisement of and concerning Plaintiff and Co-Plaintiff in a separate edition of its newspaper on page "6B".

Mississippi is a "notice-pleadings" state, but Plaintiffs are required to place Blake Kaplan on reasonable notice of the claims they have. *City of Meridian v.* \$104,960.00 *U.S. Currency*, 231 So. 3d 972, 974-73 (Miss. 2017). In that case, the city of Meridian retained custody of personal property seized in a drug arrest. The city filed a petition for forfeiture of that property under §§ 41-29-153 (a)(5) and/or 41-29-153 (a)(7). The owner objected and opposed the petition. She filed a motion to dismiss the petition under Rule 12(b)(6).

The trial court granted the forfeiture, and on appeal, the Mississippi Supreme Court found that the petition alleged "Both the currency and the truck were subject to forfeiture under Section 41-29-153(b)...." It alleges that "the truck and currency had been used, or intended for use, or constituted proceeds in violation of the Mississippi Uniform Controlled Substances Law. .... And it states that the "truck and currency should be forfeited pursuant to Mississippi Code Annotated §§ 41-29-179(4) and 41-29-181(2). ...." The Supreme Court went on to hold that the forfeiture petition put the owner of the personal property "on reasonable notice of the city's claims, and it sufficiently

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demonstrates a recognized cause of action exists upon which the city might prevail under some set of facts. The petition describes with specificity the property subject to forfeiture and provides when, where, and why it was seized".

"A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint, and an inquiry as to the legal sufficiency is essentially limited to the content of the complaint." *Griffin v. Citimortgage, Inc.*, 296 So. 3d 767, 771 (Miss. COA). In that case, the Court of Appeals affirmed the trial court's decision to dismiss that complaint for failure to state a claim pursuant to Rule 12(b)(6). The gist of the complaint was the mortgagor homeowners' claim against the mortgagee lender to stop foreclosure proceedings. The Court of Appeals found that the mortgagors alleged that the mortgagee breached the deed of trust but also found that the mortgagors cited only a single sentence in the deed of trust that had nothing to do with limiting the mortgagee's right of foreclosure upon mortgagors' default. The mortgagors therefore failed to put the mortgagee on notice of the basis for their claim that the foreclosure should have been stopped. The factual allegations failed to state a claim for relief against the mortgagee, Citimortgage. The complaint was dismissed. *Griffin*, 771-72.

#### CONCLUSION

Since Plaintiffs' Complaint fails to put Defendant Blake Kaplan on notice of the basis of any claim, the Complaint should be dismissed pursuant to Mississippi Rule of Civil Procedure 12(b)(6). As a matter of law Plaintiffs completely fail to show why Blake Kaplan, as Editor and General Manager of the *Sun Herald* newspaper, can ever be held liable for the alleged defamation or false light invasion of privacy.

# RESPECTFULLY SUBMITTED this the 14th day of October, 2021.

# **CHATHAM ASSET MANAGEMENT, LLC**

By: <u>s/ Henry Laird</u> HENRY LAIRD

# OF COUNSEL:

Henry Laird (MSB#1774)
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Case: 30.04:21:24:20165195101-Pocymenhen87:121 Fileide @21241202021 Pagegt25 of 203

# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

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Attorney for Plaintiffs

SO CERTIFIED, this the 14th day of October, 2021.

s/ Henry Laird HENRY LAIRD

#### OF COUNSEL:

Henry Laird (MSB#1774)
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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# BRIEF OF CHATHAM ASSET MANAGEMENT, LLC IN SUPPORT OF MISSISSIPPI RULE OF CIVIL PROCEDURE 12(b)(6) MOTION TO DISMISS

This brief is submitted in support of Chatham Asset Management, LLC's ("Chatham") Motion to Dismiss [Doc. #9] on failure to state a claim pursuant to Mississippi Rule of Civil Procedure 12(b)(6). On October 8, 2021 Chatham filed its Brief in Support of Mississippi Rule of Civil Procedure 12 Motion to Dismiss for Lack of Personal Jurisdiction on the ground of 12(b)(2) personal jurisdiction [Doc. #17]. Without re-urging its argument in the latter brief, Chatham incorporates those arguments in this brief.

Plaintiffs filed their Complaint on August 9, 2021 [Doc. #2] alleging defamation and false light claims against Chatham, and The McClatchy Company, LLC, and Blake Kaplan.

At ¶ 3 of the Complaint, Plaintiffs allege that Chatham is a non-resident company located in New Jersey which owns Co-Defendant The McClatchy Company, LLC which publishes the *Sun Herald* newspaper in Gulfport, Mississippi.

At ¶ 9 of the Complaint, Plaintiffs allege:

9. Personal jurisdiction is appropriate over Defendant, Chatham, the New Jersey based owner of Defendant, Sun Herald, by means of

piercing the corporate veil. Personal jurisdiction is appropriate over Defendant, Sun Herald, a Delaware company with it principal office in California, as Defendant committed a tort against two Mississippi residents and pursued business in he state of Mississippi, specifically in Jackson County. Personal jurisdiction is appropriate over Kaplan because he is an adult, Mississippi state resident.

Other than merely alleging that they were piercing the corporate veil, Plaintiffs make no further allegation concerning that claim and completely fail to allege any facts to support the allegation.

At ¶ 14 of the Complaint, Plaintiffs allege that "....Defendant, Chatham, acquired 'substantially all assets' of Defendant, Sun Herald, in a Chapter 11 Bankruptcy auction". Plaintiffs make *no* allegation that Chatham has some sort of duty to Plaintiffs, particularly some duty which was breached.

Mississippi is a "notice-pleadings" state, but Plaintiffs are required to place Chatham on reasonable notice of the claims they have.

"A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint, and an inquiry as to the legal sufficiency is essentially limited to the content of the complaint." *Griffin v. Citimortgage, Inc.*, 296 So. 3d 767, 771 (Miss. COA). In that case, the Court of Appeals affirmed the trial court's decision to dismiss that complaint for failure to state a claim pursuant to Rule 12(b)(6). The gist of the complaint was the mortgagor homeowners' claim against the mortgagee lender to stop foreclosure proceedings. The Court of Appeals found that the mortgagors alleged that the mortgagee breached the deed of trust but also found that the mortgagors cited only a single sentence in the deed of trust that had nothing to do with limiting the mortgagee's right of foreclosure upon mortgagors' default. The mortgagors therefore failed to put the mortgagee on notice of

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the basis for their claim that the foreclosure should have been stopped. The factual

allegations failed to state a claim for relief against the mortgagee, Citimortgage. The

complaint was dismissed. Griffin, 771-72.

Dismissal is particularly appropriate in the instant case in light of the holding in

Canadian National Railway, 94 So. 3d 1111, 1116 (Miss. 2012) cited in Chatham's brief

at page 7 supporting dismissal for lack of personal jurisdiction [Doc. #17], which held:

[A]bsent a sufficient allegation of particularized facts, judicial economy requires that the corporate veil should not preliminarily pierced for long-arm

jurisdiction on the mere unsubstantiated allegation in the pleadings.

CONCLUSION

Since Plaintiffs' Complaint fails to put Defendant Chatham on notice of the basis

of any claim, the Complaint should be dismissed pursuant to Mississippi Rule of Civil

Procedure 12(b)(6). As a matter of law Plaintiffs completely fail to show why Chatham,

as owner of the Sun Herald newspaper, can ever be held liable for the alleged defamation

or false light invasion of privacy.

**RESPECTFULLY SUBMITTED** this the 14th day of October, 2021.

CHATHAM ASSET MANAGEMENT, LLC

By: <u>s/ </u>

s/ Henry Laird

**HENRY LAIRD** 

OF COUNSEL:

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# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

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Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal..com

Attorney for Plaintiffs

SO CERTIFIED, this the 14th day of October, 2021.

s/ Henry Laird_	
HENRY LAIRD	

# OF COUNSEL:

Henry Laird (MSB#1774)
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#### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

#### ANSWER OF THE McCLATCHY COMPANY, LLC

COMES NOW Defendant The McClatchy Company, LLC and files this its Answer to the Complaint as follows:

#### FIRST AFFIRMATIVE DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted.

#### SECOND AFFIRMATIVE DEFENSE

Plaintiffs are precluded from any recovery by virtue of the First Amendment to the United States Constitution guaranteeing freedom of speech and the press.

#### THIRD AFFIRMATIVE DEFENSE

Plaintiffs are precluded from recovery by virtue of Mississippi Constitution Article III, § 13 guaranteeing the right to free speech and the press guaranteeing that free speech is a cherished right.

#### **FOURTH AFFIRMATIVE DEFENSE**

Despite Defendant's good faith efforts, the classified advertisement was the result of a good faith mistake.

#### FIFTH AFFIRMATIVE DEFENSE

Upon learning Plaintiffs' complaints, Defendant immediately published a correction concerning the mistaken identity.

#### SIXTH AFFIRMATIVE DEFENSE

Section 95-1-5 Mississippi Code applies to this case.

#### SEVENTH AFFIRMATIVE DEFENSE

Defendant is free of any negligence in the publication of the classified advertisement at issue.

#### **EIGHTH AFFIRMATIVE DEFENSE**

The news story about which Plaintiffs complains involves an issue of public interest and concern requiring Plaintiffs to prove *New York Times v. Sullivan* malice by clear and convincing evidence, which as a matter of law, Plaintiffs cannot do.

#### NINETH AFFIRMATIVE DEFENSE

Plaintiffs are vortex public figures requiring them to prove *New York Times v.*Sullivan malice by clear and convincing evidence, which as a matter of law, Plaintiffs cannot do.

#### **TENTH AFFIRMATIVE DEFENSE**

Plaintiffs are precluded from recovery by the Fair Comment Doctrine.

#### **ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are precluded from recovery by the Neutral Reportage Doctrine.

#### TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to punitive damages.

#### THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to presumed damages.

#### **PARTIES**

- 1. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 1 of the Complaint and as a result deny them.
- 2. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 2 of the Complaint and as a result deny them.
- 3. Defendant denies the allegations contained in Paragraph 3 of the Complaint, except it admits it is a foreign limited liability company at the address alleged.
- 4. Defendant admits the allegations contained in Paragraph 4 of the Complaint.
- 5. Defendant denies the allegations contained in Paragraph 5 of the Complaint, except it admits Blake Kaplan resides in Jackson, County, Mississippi.
- 6. Defendant denies the allegations contained in Paragraph 6 of the Complaint.
- 7. Defendant denies the allegations contained in Paragraph 7 of the Complaint.

# **JURISDICTION AND VENUE**

8. Defendant denies the allegations contained in Paragraph 8 of the Complaint.

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- 9. Defendant denies the allegations contained in Paragraph 9 of the Complaint.
- 10. Defendant denies the allegations contained in Paragraph 10 of the Complaint.
- 11. Defendant denies the allegations contained in Paragraph 11 of the Complaint.

#### **FACTS**

- 12. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 13. Defendant denies the allegations contained in Paragraph 13 of the Complaint, except it admits the circulation of the Sun Herald.
- 14. Defendant admits the allegations contained in Paragraph 14 of the Complaint.
- 15. Defendant denies the allegations contained in Paragraph 15, but it admits the classified advertisement was published in print and digital format.
- 16. Defendant denies the allegations contained in Paragraph 16 of the Complaint.
- 17. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 17 and as a result denies them; but Defendant admits someone called about the advertisement on December 8, 2020.
- 18. Defendant is without sufficient knowledge to admit or deny the allegations in Paragraph 18 and as a result denies them.

Casasa 0501: 21-21-00105-10-10 H Do Domand ti 3#-23 F F de do 2014 10022 1 Page 1350 14203

- 19. Defendant denies the allegations contained in Paragraph 19 of the Complaint.
- 20. Defendant denies the allegations contained in Paragraph 20 of the Complaint, but it admits a retraction was published.
- 21. Defendant denies the allegations contained in Paragraph 21 of the Complaint.

#### STATUTORY REQUIREMENTS

- 22. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 23. Defendant admits the allegations contained in Paragraph 23 of the Complaint.
- 24. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 24 of the Complaint and as a result, denies them.
- 25. Defendant denies the allegations contained in Paragraph 25 of the Complaint, except it admits they received the notice.
- 26. Defendant denies the allegations contained in Paragraph 26 of the Complaint.
- 27. Defendant admits the allegations contained in Paragraph 27 of the Complaint.
- 28. Defendant denies the allegations contained in Paragraph 28 of the Complaint.
- 29. Defendant denies the allegations contained in Paragraph 29 of the Complaint.

Case: 30511:21-24-00-135-39-DH Dobbeent #1137:-23 Find do 2104/8/02021 Pagage 3500611203

#### APPLICABLE STANDARD

- 30. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 31. Defendant admits *Whitten v. Commercial Dispatch Pub. Co.*, 487 So. 2d 843, 844 (Miss. 1986) and *Staheli v. Smith*, 548 So. 2d 1299, 1304 (Miss. 1989) are reported decisions in Mississippi but deny the balance of the allegations.
- 32. Defendant denies the allegations contained in Paragraph 32 of the Complaint.
- 33. Defendant denies the allegations contained in Paragraph 33 of the Complaint.
- 34. Defendant denies the allegations contained in Paragraph 34 of the Complaint.
- 35. Defendant denies the allegations contained in Paragraph 35 of the Complaint.
- 36. Defendant denies the allegations contained in Paragraph 36 of the Complaint.
- 37. Defendant denies the allegations contained in Paragraph 37 of the Complaint.
- 38. Defendant denies the allegations contained in Paragraph 38 of the Complaint.
- 39. Defendant denies the allegations contained in Paragraph 39 of the Complaint.

- 40. Defendant denies the allegations contained in Paragraph 40 of the Complaint.
- 41. Defendant denies the allegations contained in Paragraph 41 of the Complaint.
- 42. Defendant denies the allegations contained in Paragraph 42 of the Complaint.

#### CAUSES OF ACTION

#### FIRST CAUSE OF ACTION: DEFAMATION

- 43. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 44. Defendant denies the allegations contained in Paragraph 44 of the Complaint.
- 45. Defendant denies the allegations contained in Paragraph 45 of the Complaint, but admit, among others, four of the elements of a defamation claim.
- 46. Defendant denies the allegations contained in Paragraph 46 of the Complaint, except Defendant admits the *Sun Herald* learned that the Health Department said it did not forward the advertisement to the newspaper; except Defendant is without sufficient knowledge to admit or deny the alleged telephone calls and as a result, denies them.
- 47. Defendant denies the allegations contained in Paragraph 47 of the Complaint.
- 48. Defendant denies the allegations contained in Paragraph 48 of the Complaint.

# Case: 30C11:21-cv-00135-DH Dobboom#ht#-23 F#98d0204802021 PRggel 8061203

- 49. Defendant denies the allegations contained in Paragraph 49 of the Complaint.
- 50. Defendant denies the allegations contained in Paragraph 50 of the Complaint.
- 51. Defendant denies the allegations contained in Paragraph 51 of the Complaint.
- 52. Defendant denies the allegations contained in Paragraph 52 of the Complaint.
- 53. Defendant denies the allegations contained in Paragraph 53 of the Complaint.
- 54. Defendant denies the allegations contained in Paragraph 54 of the Complaint.
- 55. Defendant denies the allegations contained in Paragraph 55 of the Complaint.
- 56. Defendant is without sufficient knowledge to admit or deny the allegations contained in Paragraph 56 of the Complaint and as a result denies them.
- 57. Defendant denies the allegations contained in Paragraph 57 of the Complaint.
- 58. Defendant denies the allegations contained in Paragraph 58 of the Complaint.
- 59. Defendant denies the allegations contained in Paragraph 59 of the Complaint.

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- 60. Defendant denies the allegations contained in Paragraph 60 of the Complaint.
- 61. Defendant denies the allegations contained in Paragraph 61 of the Complaint.
- 62. Defendant denies the allegations contained in Paragraph 62 of the Complaint.
- 63. Defendant denies the allegations contained in Paragraph 63 of the Complaint.
- 64. Defendant denies the allegations contained in Paragraph 64 of the Complaint.

#### SECOND CAUSE OF ACTION: INVASION OF PRIVACY FALSE LIGHT

- 65. Defendant adopts and realleges its heretofore pleaded admissions and denials.
- 66. Defendant denies the allegations contained in Paragraph 66 of the Complaint.
- 67. Defendant admits the allegations contained in Paragraph 67 of the Complaint.
- 68. Defendant denies the allegations contained in Paragraph 68 of the Complaint.
- 69. Defendant denies the allegations contained in Paragraph 69 of the Complaint.
- 70. Defendant denies the allegations contained in Paragraph 70 of the Complaint.

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71. Defendant denies the allegations contained in Paragraph 71 of the

Complaint.

72. Defendant denies the allegations contained in Paragraph 72 of the

Complaint.

DAMAGES

**75.** Defendant denies the allegations contained in Paragraph 75 of the

Complaint,

Defendant denies the allegations in the unnumbered ad damnum clause, denies

that the Plaintiffs are entitled to any relief for any amount whatsoever, and requests that

the Complaint be dismissed with prejudice at Plaintiffs' cost with attorney's fees to

Defendants.

RESPECTFULLY SUBMITTED this the 18th day of October, 2021.

THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD

By:

s/ Henry Laird

HENRY LAIRD

OF COUNSEL:

Henry Laird (MSB#1774) WISE CARTER CHILD & CARAWAY, P.A. 2510 14th Street, Suite 1125

Gulfport, Mississippi 39501

Telephone: (228) 867-7141

hfl@wisecarter.com

10

## **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have this day electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III

Karmel Keeton

The Mitchell Firm, PLLC

1062 Highland Colony Parkway, Suite 150

Ridgeland, MS 39157

Email: jmitchell@tmflegal.com

kkeeton@tmflegal..com

Attorney for Plaintiffs

SO CERTIFIED, this the 18th day of October, 2021.

s/ Henry Laird	
HENRY LAIRD	

## **OF COUNSEL:**

Henry Laird (MSB#1774)
WISE CARTER CHILD & CARAWAY, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, Mississippi 39501
Telephone: (228) 867-7141
hfl@wisecarter.com

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### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

### NOTICE OF ENTRY OF APPEARANCE

PLEASE TAKE NOTICE, that Karmel L. Keeton of The Mitchell Firm, PLLC enters her appearance on behalf of Plaintiffs, Robert Lett, III and Charles Fountain, in the above-captioned action. Please note that Karmel L. Keeton's firm address is 1062 Highland Colony Parkway, Suite 150 Ridgeland, Mississippi 39157, and firm phone number (769) 300-0462.

RESPECTFULLY SUBMITTED, this the 22nd day of October 2021.

# QUEWANDRA DANIEL AND TATTIANA BELL

By:

/s/ Karmel L. Keeton\_

Karmel L. Keeton (MS Bar No. 106308) Jesse Mitchell, III (MS Bar No. 103020)

Attorneys for Plaintiff

#### OF COUNSEL:

THE MITCHELL FIRM, PLLC

1062 Highland Colony Parkway, Ste. 150

Ridgeland, MS 39157

Telephone: (769) 300-0462 Facsimile: (601) 510-1981

Email: jmitchell@tmflegal.com

kkeeton@tmflegal.com

## Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 327 of 387

Case: 30.511:61-60-165-1851.DI-Poots Brenth #in 77:124 File to 21041202021 Page get 3 of 203

## **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Keeton</u>, attorney for Plaintiffs, hereby certify that on this day, I electronically filed the foregoing *Notice of Entry of Appearance* with the Clerk of the Court using the MEC system, which sent notification of such filing to all counsel of record.

THIS, the 22nd day of October 2021.

By: /s/ Karmel L. Kceton

Karmel L. Keeton (MS Bar No. 106308)

## Case: 3091671:54-901661951DHDogumenten8#: 25 Fileited 2104702021 Paragre44 of 203

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

## DEFENDANT CHATHAM ASSET MANAGEMENT, LLC's NOTICE OF SERVICE

COME NOW Defendant, Chatham Asset Management, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant, Chatham Asset Management, LLC's Answers to Plaintiffs' First Set of Interrogatories; and
- 2. Defendant, Chatham Asset Management, LLC's, Responses to Plaintiffs' First Set of Request for Requests for Production of Documents.

Respectfully submitted, this the 27th day of October, 2021.

CHATHAM ASSET MANAGEMENT, LLC Defendant

BY: s/ Henry Laird
HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: hfl@wisecarter.com

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Case: 30.9601:01-00105195-DI-Document En87:125 File the document En87:125 F

### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 27th day of October, 2021.

s/ Henry Laird

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, MS 39501

Case: 30.91:31:64-00135195-DIPOCHORUMEN 7:126 FILEN # 02124292021 Pagage 6 of 203

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

### DEFENDANT BLAKE KAPLAN'S NOTICE OF SERVICE

COME NOW Defendant, Blake Kaplan, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant, Blake Kaplan's, Answers to Plaintiffs' First Set of Interrogatories; and
- 2. Defendant, Blake Kaplan's, Responses to Plaintiffs' First Set of Request for Requests for Production of Documents.

Respectfully submitted, this the 29th day of October, 2021.

BLAKE KAPLAN Defendant

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hft@wisecarter.com">hft@wisecarter.com</a>
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125

Gulfport, MS 39501

### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 29th day of October, 2021.

s/ Henry Laird	
----------------	--

Henry Laird (MSB No. 1774)
Email: hfl@wisecarter.com
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, MS 39501

### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# MOTION OF DEFENDANT THE McCLATCHY COMPANY, LLC FOR ADDITIONAL TIME TO RESPOND TO DISCOVERY

COMES NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and files this its motion for fourteen (14) days additional time in which to answer interrogatories and respond to requests for production of documents from Plaintiffs. These discovery responses are due November 1, 2021, but Defendant needs an additional fourteen (14) days' time to respond as fully and accurately as possible.

Employees of The McClatchy Company, LLC are in multiple locations, and in some cases, individuals with information to make the responses are no longer with Defendant, causing Defendant to find the information necessary to make the responses from different sources.

Defendant now requests the Court until November 15, 2021 to make those discovery responses.

Case: 39.5631:54-90165185LDHPocymenthen87:127 Filexted 21042902021 Pagege 42 of 203

Respectfully submitted, this the 29th day of October, 2021.

THE McCLATCHY COMPANY, LLC Defendant

BY: <u>s/ Henry Laird</u> HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125 Gulfport, MS 39501

Case; 39.34:21-201351951DHPocpmenhien37:127 File to 21241202021 Pagage58 of 203

### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 29th day of October, 2021.

<u>s/</u>	Henry	Laird	

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, MS 39501

Case: 30.511:21-80-351951 DIPOCHBRITHEN #: 28 FIRME 0.212402021 Pages 151 of 203

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

CIVIL ACTION NO. <u>30CI1:21-cv-00135-DH</u>

JACKSON COUNTY CIRCUIT JUDGE

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

DEFENDANTS

# PLAINTIFFS' RULE 41 STIPULATION OF DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANT CHATHAM ASSET MANAGEMENT, LLC

COME NOW, Plaintiffs, Robert Lett, III and Charles Fountain, by and through their counsel of record, and pursuant to Rule 41(a)(1)(ii) of the Mississippi Rules of Civil Procedure and so stipulate with Defendant's counsel to dismiss all of Plaintiffs' claims in this action against Defendant, Chatham Asset Management, LLC, without prejudice. This action shall remain pending as to the remaining Defendants, The McClatchy Company, LLC d/b/a Sun Herald and Blake Kaplan. This Court, being advised of this dismissal by all counsel hereto, finds that this Stipulation is well taken and should be granted.

IT IS THEREFORE, ORDERED AND ADJUDGED that any and all claims asserted by Plaintiffs, Robert Lett, III and Charles Fountain, in this cause be and are hereby dismissed without prejudice as to Defendant, Chatham Asset Management, LLC, leaving all parties to bear their own respective costs.

SO ORDERED AND ADJUDGED this the _	day of 2021,
	HONORABLE DALE HARKEY

Case: 30Cl1:21-00135134-DIPOCHORUMENT #128 FILE #1240202021 Pagage 52 of 203

### STIPULATED AND AGREED TO BY:

Jesse Mitchell, III (MS Bar No. 103020)

Karmel Keeton (MS Bar No. 106308)

The Mitchell Firm, PLLC

1062 Highland Colony Pkwy, Ste. 150

Ridgeland, MS 39157 Telephone: 769.300.0462 jmitchell@tmflegal.com kkeeton@tmflegal.com Attorneys for Plaintiffs Henry Laird MS Bar No. 1774) Wise Carter Child & Salaway, P.A. 2150 14th Street, Ste. 1125

Gulfport, MS 39501
Telephone: 228.867.7141
hfl@wisecarter.com
Attorney for Defendants

### PREPARED AND PRESENTED BY:

Jesse Mitchell, III (MS Bar No. 103020) Karmel Keeton (MS Bar No. 106308) The Mitchell Firm, PLLC 1062 Highland Colony Pkwy, Ste. 150 Ridgeland, MS 39157 Telephone: 769.300.0462 jmitchell@tmflegal.com kkeeton@tmflegal.com Case: 30911-21-24-00-135-1951 DHD oquare ## 137-29 File # 132/24/202021 Pagg # 58 of 203

### IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12 CIVIL ACTION NO. 30C11:21-cv-00135-DH

NOV 10 2021

**DEFENDANTS** 

RANDY CARNEY, CLERK

BY\_\_\_\_\_D,C,

PLAINTIFFS' RULE 41 STIPULATION OF DISMISSAL WITHOUT PREJUDICE AS TO DEFENDANT CHATHAM ASSET MANAGEMENT, LLC

COME NOW, Plaintiffs, Robert Lett, III and Charles Fountain, by and through their counsel of record, and pursuant to Rule 41(a)(1)(ii) of the Mississippi Rules of Civil Procedure and so stipulate with Defendant's counsel to dismiss all of Plaintiffs' claims in this action against Defendant, Chatham Asset Management, LLC, without prejudice. This action shall remain pending as to the remaining Defendants, The McClatchy Company, LLC d/b/a Sun Herald and Blake Kaplan. This Court, being advised of this dismissal by all counsel hereto, finds that this Stipulation is well taken and should be granted.

IT IS THEREFORE, ORDERED AND ADJUDGED that any and all claims asserted by Plaintiffs, Robert Lett, III and Charles Fountain, in this cause be and are hereby dismissed without prejudice as to Defendant, Chatham Asset Management, LLC, leaving all parties to bear their own respective costs.

SO ORDERED AND ADJUDGED this the Tay of Nove

2021.

HONORABLE DALE HARKEY U JACKSON COUNTY CIRCUIT JUDGE

## Case: 30C11:21:24-001351951 DI-Pocytoenthen 37:129 File to 021241202221 Pagage 52 of 203

### STIPULATED AND AGREED TO BY:

Jesse Mitchell, III (MS Bar No. 103020)

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jmitchell@tmflegal.com
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Attorneys for Plaintiffs

Henry Laird MS Bur No. 1774) Wise Carter Child & Salaway, P.A.

2150 14th Street, Ste. 1125 Gulfport, MS 39501 Telephone: 228.867.7141 hfl@wisecarter.com Attorney for Defendants

### PREPARED AND PRESENTED BY:

Jesse Mitchell, III (MS Bar No. 103020)
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## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

v.

**PLAINTIFFS** 

CIVIL ACTION NO. 30Cl1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT BLAKE KAPLAN'S MISSISSIPPI RULE OF CIVIL PROCEDURE 12(b)(6) MOTION TO DISMISS

COME NOW Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, by and through their counsel of record and file this their Response in Opposition to Defendant, Blake Kaplan's Mississippi Rule of Civil Procedure 12(b)(6) Motion to Dismiss, and in support would state to wit the following:

#### INTRODUCTION

This is a defamation case (or alternatively, an invasion of privacy false light case) arising out of a libelous advertisement (the "Advertisement") imputing a loathsome disease to Plaintiffs. As a result of the Advertisement's publication, Plaintiffs' lives, their marriages, and children have been severely affected by the "Scarlet Letters" forever attached to their names. This blatantly false Advertisement was published in print and online in the Sun Herald newspaper, on December 8, 2020, and again on December 9, 2020. The Advertisement was published by Defendant newspaper company, The McClatchy Company, LLC d/b/a Sun Herald ("McClatchy"), for which Defendant, Blake Kaplan ("Kaplan"), serves as Executive Editor and General Manager. Kaplan moves this Court to dismiss Plaintiffs' Complaint for alleged failure to state a claim, arguing that Plaintiffs failed "to put

Case: 30C11:21-CY-00135-DHD06H08H1#h:37-30 Find: 02/24/20221 Proced-5600f1203

Defendant Blake Kaplan on notice of the basis of any claim [...]" However, Plaintiffs' Complaint more than sufficiently pleads their claims against Kaplan for libel per se (or alternatively invasion of privacy false light) and negligence due to lack of supervision/management, failure to employ good journalistic practices, failure to follow internal policies and procedures, failure to employ processes of review and safeguard, failure to edit and fact check, and an overall failure to prevent the Advertisement's publication. Accordingly, Defendant, Blake Kaplan's motion should be denied.

### **LEGAL STANDARD**

Generally, Mississippi is a notice pleading state. A plaintiff, therefore, is only required to set out, "a short and plain statement of the claim showing that [he/she] is entitled to relief [...]"<sup>2</sup> Further, documents incorporated by reference or attached as exhibits are considered to be a part of the pleadings for all purposes.<sup>3</sup> When considering a motion to dismiss for failure to state a claim, a court must accept as true the well-pleaded factual allegations in the complaint and draw all reasonable inferences in favor of the plaintiff.<sup>4</sup> Therefore, a complaint should not be dismissed for failure to state a claim "unless it appears beyond a reasonable doubt that the plaintiff will be unable to prove any set of facts in support of the claim."<sup>5</sup>

## **ARGUMENT**

1. Plaintiffs' claims are sufficiently stated to provide Defendant, Blake Kaplan with notice.

Plaintiffs' Complaint places Kaplan on notice through sufficient claims that entitle Plaintiffs to relief. On August 9, 2021, Plaintiffs filed their Complaint alleging libel per se (or alternatively invasion of privacy false light) and negligence on the part of Defendants, Chatham Asset Management,

<sup>&</sup>lt;sup>1</sup> Brief of Def. Blake Kaplan in Support of Miss. R. Civ. P. 12(b)(6) Motion to Dismiss 3, MEC No. 21.

<sup>&</sup>lt;sup>2</sup> Miss. R. Civ. P. 8(a)(1).

<sup>3</sup> See Miss. R. Civ. P. 10(c).

<sup>4</sup> See Asheroft v. Ighal, 556 U.S. 662, 678-79 (2009).

<sup>&</sup>lt;sup>5</sup> City of Meridian v. \$104,960.00 United States Currency, 231 So. 3d 972, 974 (¶8) (Miss. 2017) (citations omitted).

LLC; The McClatchy Company, LLC d/b/a Sun Herald; and Blake Kaplan. Specifically, that Defendants' unprivileged publication of a false health notice attributing possible STDs/HIV to Plaintiffs constituted libel per se as the advertisement not only "imputed the existence of some contagious disease," but "tend[ed] to injure [their] reputation and thereby expose[d them] to public hatred, contempt, or ridicule, degrade[d them] in society, lessen[ed them] in public esteem or lower[ed them] in the confidence of the community[. . . .]" In fact, Plaintiffs' Complaint included a copy of the Advertisement originally published in the Sun Herald newspaper.

AMBULANDUNCEMENTS

Health Notification
HEALTH DEPT has been notified to contact 3 more alleged person(s) to be tested for ST DARIV dos to parson(s) been reported of having contact with positive person(s)
REPORT TO NEARBY HEALTH DEPT www.msdliscom. NEAL RAINEY 38 of PASCAGOULA, CHARLES LAMONT FOUNTAIN 42 of PASCAGOULA, ROBERT LEE LETT 39 of MOSS ROINT (NOTIFIED 12-7 2020) 601-576-7400

The Advertisement was included in Exhibits B and C of the Complaint, and as an incorporated image in Exhibit E's Statutory Notice Requirement, which was originally served upon Defendant, Kaplan, on April 17, 2021, in compliance with Mississippi Code Section 95-1-5. Like the Complaint, the Statutory Notice Requirement also put Kaplan on notice of Plaintiffs' potential claims.

Plaintiffs further allege in their Complaint that Defendants "played a role in the publication of the libelous advertisement at issue [...], failed to prevent the Advertisement's publication, and/or are

<sup>&</sup>lt;sup>6</sup> Complaint 14 (¶63), MEC No. 2 (citing Phillips Brothers, L.P. v. Winstead, 129 So. 3d 906, 928 (¶76) (Miss. 2014)).

<sup>&</sup>lt;sup>7</sup> Complaint 14 (¶62), MEC No. 2 (citing Fulton, 498 So. 2d at 1217).

<sup>&</sup>lt;sup>8</sup> Id. at Ex. B, C, and E.

<sup>9</sup> Id. at Ex. E.

Case: 30515124-00135-95-0+Dobbeent #137-30 Find to 3/24/20221 Page 4 58061203

generally liable to Plaintiffs as a result of the Advertisement's publication." As it relates to negligence, Plaintiffs assert that,

Defendants owed Plaintiff[s] a duty of care to act with a reasonable level of care in publishing the Advertisement at issue. Defendants breached this duty when Defendants failed to act in a manner consistent with those in the journalism profession. Specifically, Defendants failed to research, fact check, or verify the obviously false information contained within the Advertisement. Defendants failed to verify the source of information, let alone the source's trustworthiness. Defendants failed to review the Advertisement and edit for any errors or falsities and/or Defendants' processes for review and safeguard failed or were not properly employed. Defendants further failed to supervise or manage the editing process. Overall Defendants failed to follow good journalistic practices, including internal policies and procedures.<sup>10</sup>

Moreover, "Defendants invaded Plaintiffs' privacy by [. . .] negligently publicizing statements about Plaintiff[s] which were highly offensive to a reasonable person, and which Defendants knew or should have known to be false."

Under Rule 8(a) of the Mississippi Rules of Civil Procedure, a complaint need only "provide sufficient notice to the defendant of the claims and grounds upon which relief is sought." Plaintiffs have done so here. Plaintiffs are not required, however, to recite all the underlying facts entitling them to relief. In their Complaint, Plaintiffs assert several means of negligence, all of which boil down to Defendant Kaplan's failure to act accordingly with the journalism profession, company policies and procedures, and within the scope of his position as a supervisor/manager resulting in the Advertisement's publication. As such, a more definite statement pleading specific evidentiary details is not necessary, especially when Plaintiffs' Complaint is intelligible and provides sufficient notice. For it is through liberal discovery and summary judgment motions that disputed facts will become

<sup>10</sup> Id. at 13 (¶58).

<sup>11</sup> Complaint 14 (¶66), MEC No. 2.

<sup>12</sup> Miss, R. Civ. P. 8 Advisory Comm. Notes (citing DynaSteel Corp. v. Agtec Industries, Inc. 611 So. 2d 977 (Miss. 1992)).

<sup>13</sup> See Crowe v. Crowe, 641 So. 2d 1100, 1104 (Miss. 1994) (citing Miss. R. Civ. P. 8 Comment).

<sup>14</sup> See Miss. R. Civ. P. 12 Advisory Comm. Notes.

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defined and unmeritorious claims disposed of.<sup>15</sup> Thus, with Plaintiffs' short and plain statements, Plaintiffs have sufficiently plead their claims and have put all Defendants on notice, including Kaplan.

2. Based on Plaintiffs' statements, this Court could find that facts exist against Defendant, Blake Kaplan, entitling Plaintiffs to relief.

Given Kaplan's position within the company, this Court could easily find that Kaplan's actions or inactions played a direct role in the publication of the Advertisement, entitling Plaintiffs to relief. On October 11, 2021, Defendant, Blake Kaplan, filed his Affidavit with this Court. 16 Within this Affidavit, Kaplan states that he serves as Regional Executive Editor for Defendant, McClatchy, and as General Manager for the Sun Herald. 17 Despite serving within these executive and managerial roles, Kaplan alleges that his "responsibilities are primarily news-related." 18 Kaplan further asserts that he has "no responsibility for the paper's advertising department or its revenues," and has "no day-to-day knowledge of what content appears in the classified advertising section of the Sun Herald newspaper since the advertising is processed either electronically or by remote workers outside Mississippi." 20

In opposition, Plaintiffs argue that as Regional Executive Editor for McClatchy, and General Manager for the Sun Herald, Kaplan is within the company hierarchy, if not at the top of the structure, to implement and enforce company policies and procedures, to include processes for review and safeguard, and to train, supervise, and manage employees within relevant departments. Clearly, the Advertisement is blatantly false and fake on its face, however, Kaplan, nor anyone under his supervision as the Regional Executive Editor and General Manager, took the time to prevent let alone review the Advertisement before publishing it – twice.

<sup>15</sup> See Conley v. Gibson, 355 U.S. 41, 47-48 (1957).

<sup>16</sup> Affidavit of Blake Kaplan, MEC No. 18.

<sup>17</sup> Id. at 1 (¶3).

<sup>18</sup> Affidavit of Blake Kaplan 1 (¶4), MEC No. 18.

<sup>19</sup> Id. at 2 (¶4).

<sup>20</sup> Id. at 2 (¶7).

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Based on Kaplan's assertions, no general manager or executive would ever be held responsible for their managerial or executive actions or inactions within a company as they were not in "direct" control. This simply cannot be the case. Processes and policies must be in place, and employees must be trained and supervised to act in accordance with company processes and policies and overall good journalistic practices. Kaplan's position places him uniquely within such authority to regulate processes, policies, and people, regardless of his proximity or control over a specific issue.

Kaplan is not a mere employee with zero involvement, as he would have the Court believe. No. Rather, as Kaplan states in his affidavit, he is responsible for "plan[ning] and strategiz[ing news] stories [...,] edit[ing news] stories for fairness, spelling, grammar, truthfulness and libel [...,] tak[ing] calls from customers [...,] represent[ing] each market in company meetings [...,] represent[ing] the paper at public events, [and] tak[ing] calls as an official representative of the paper [...],"21 among other listed responsibilities. However, this brief, seven sentence description of Kaplan's duties and responsibilities as Regional Executive Editor of McClatchy and General Manager of the Sun Herald is and in no way can be exhaustive. Therefore, additional discovery into Kaplan's duties and responsibilities is required to negate his involvement given the definitions of his titles. As defined by Webster's Dictionary, an "executive" is "one who holds a position of administrative or managerial responsibility in a business or other organization." Meanwhile, Black Law's Dictionary defines a "manager" as "[a] person who administers or supervises the affairs of a business, office, or other organization, including authority over other managers." Thus, Kaplan's

<sup>&</sup>lt;sup>21</sup> Affidavit of Blake Kaplan 1-2 (¶4), MEC No. 18 (emphasis added).

<sup>22</sup> Webster's Third New Int'l Dictionary 794 (1993).

<sup>23</sup> Black's Law Dictionary 979 (8th ed. 2004).

<sup>&</sup>lt;sup>24</sup> Id.

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executive, supervisory, and managerial roles need to be further explored, and will likely prove Kaplan's negligence.

From the limited discovery that was conducted however, Kaplan states that he "request[ed] assistance [from Tony Berg and Dan Morgenstern] to find out how the ad was placed[, . . . discussed] print related issues concerning the ad [with Sarah Patterson and Kerry Bean, . . . and told his] boss, Robyn Tomlin, [. . .] what happened [to] loop her into things." What is important to note is that each person listed above is a member of management. So, just as Kaplan was able to message and converse with other members of management after the Advertisement's publication, he could have conversed with, messaged, trained, supervised, and managed other members of management in the relevant departments to adhere to company policies and procedures, to stay abreast of issues, and to employ and enforce the necessary safeguards prior to the Advertisement's publication to avoid what occurred in this case.

Further, Kaplan produced a voicemail from Plaintiff, Robert Lett, III, in which Mr. Lett puts both Kaplan and the Sun Herald on notice of the defamatory advertisement on the first date of publication, December 8, 2020.<sup>27</sup> Kaplan also "received a communication from reporter Anita Lee [. . .] asking about the origin of the ad."<sup>28</sup> Yet, despite being made personally aware of the defamatory advertisement on the afternoon of December 8, 2020, through several means, and swearing to as much in interrogatories, Kaplan as the official representative of the Sun Herald and within his executive and managerial roles, failed to stop the Advertisement's re-print in a separate publication on December 9,

<sup>25</sup> See Exhibit "A" - Def. Blake Kaplan's Answers to Pls' 1st Set of Interrogs., 3-4 Interrog. No. 6.

<sup>&</sup>lt;sup>26</sup> Based on their LinkedIn profiles and McClatchy's website, Tony Berg is McClatchy's Senior Vice President of Advertising; Dan Morgenstern was McClatchy's East Region Sales Director at the time of the subject incident; Sarah Patterson is the Director of Production at McClatchy; Kerry Bean is McClatchy's Senior Director of News Publishing; and Robyn Tomlin now the McClatchy Vice President of Local News was a President and Editor at News & Observer/Herald-Sun and McClatchy's Southeast Regional Editor at the time of the subject incident.

<sup>&</sup>lt;sup>27</sup> See Exhibit "B.1" - Def. Blake Kaplan's Resp. to Pls' 1st Set of Req. for Produc. of Docs., 2 Req. No. 4. See also Exhibit "B.2" - Tr. of Req. No. 4. Note: A copy of the voicemail audio has been mailed to the Court Clerk on a jump drive for conventional filing.

<sup>28</sup> See Ex. A at 1-2 Interrog. No. 2.

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2020. In his affidavit, Kaplan claims he "knew nothing about the classified ad which is the subject of this litigation until after it was published and had no responsibility for accepting or publishing the classified ad which is the subject of this litigation." To claim zero involvement, while being aware and maintaining the authority to address the situation as the official representative of the newspaper raises reasonable doubt to say the least.

Kaplan's position coupled with the discovery currently conducted presents reasonable facts beyond doubt that substantiate Plaintiffs' claims and entitle them to relief. Had Kaplan not neglected his duties and responsibilities as Regional Executive Editor of McClatchy and General Manager of the Sun Herald, and enforced or implemented company policies, processes, and procedures, and trained and managed people or departments to review advertisements for libel and trustworthiness prior to their dissemination to millions of viewers, a situation like this would not have happened. Kaplan not only failed to enforce or implement safeguards and company policies, processes, and procedures, but he failed to properly train, supervise, and/or manage relevant employees or departments, and prevent or mitigate the Advertisement's publication despite knowledge of its defamatory nature. Kaplan's actions and inactions resulted in Plaintiffs' damages, for which Plaintiffs are entitled to sue. Plaintiffs have properly asserted these claims in their Complaint, as previously addressed, therefore Defendant, Blake Kaplan's motion to dismiss should fail.

### **CONCLUSION**

In conclusion, Plaintiffs' Complaint fully complies with the pleading requirements of Rule 8 of the Mississippi Rules of Civil Procedure and provides Defendant Kaplan with fair notice of the charges against him and the grounds therefor. Moreover, the discovery conducted thus far provides this Court with plausible evidence of Kaplan's wrongdoing, and additional discovery and argument

<sup>&</sup>lt;sup>29</sup> Affidavit of Blake Kaplan 3 (¶9), MEC No. 18.

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will add further detail as the case progresses. Accordingly, for the reasons set forth herein, Plaintiffs respectfully requests this Court deny Defendant's 12(b)(6) Motion to Dismiss.

RESPECTFULLY SUBMITTED, this the 11th day of November 2021.

ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

By:

/s/ Karmel L. Keeton

Karmel LeDonia Keeton (MSB No. 106308)

Jesse Mitchell, III (MSB No. 103020)

Attorneys for Plaintiffs

### OF COUNSEL:

The Mitchell Firm, PLLC 1062 Highland Colony Pkwy, Ste. 150 Ridgeland, Mississippi 39157

Telephone: 769.300.0462 Facsimile: 601.510.1981

Email: jmitchell@tmflegal.com

kkeeton@tmflegal.com legalassistant@tmflegal.com Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 348 of 387

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## **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Keeton</u> hereby certify, that on <u>November 11, 2021</u>, I electronically filed the foregoing with the Clerk of Court using the ECF/MEC system which will send notification of such filing to all counsel of record.

## RESPECTFULLY SUBMITTED,

By: /s/Karmel L. Keeton
Karmel LeDonia Keeton (MSB No. 106308)

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# DEFENDANT BLAKE KAPLAN'S ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES

COMES NOW Defendant, Blake Kaplan, and answers Plaintiffs' First Set of Interrogatories as follows:

INTERROGATORY NO. 1: Please provide your full name, social security number, current address, current employer and job title, and any and all telephone numbers (including but not limited to mobile telephones).

ANSWER: Blake Kaplan

c/o The McClatchy Company, LLC

1601 Alhambra Blvd., Suite 100, Sacramento, CA 95816

Employer: The McClatchy Company, LLC

Job title: Regional Executive Editor and Sun Herald General

Manager

601-909-0637

INTERROGATORY NO. 2: Please identify when and how you learned about the subject Advertisement at issue in this cause of action. Please include the date and the person or medium that communicated the information to you, your location when you learned of it, and the method (telephone call, text message, email face to face, written) etc.) of the communication.)

EXHIBIT

ANSWER: learned of the ad on the afternoon of December 8, 2020. I received a communication from reporter Anita Lee who had received communications from Liz Sharlot Director, Office of Communications, for the Mississippi Department of Health, asking about the origin of the ad Ms. Sharlot fold Ms. Lee the department had received questions about the ad. At the time of all this communication, I was at my home in Gautier, Mississippi.

INTERROGATORY NO.3: Please identify the company(ies), entity(ies), or person(s) responsible for making decisions concerning the solicitation, editing, and publication process(es) for advertisements at The McClatchy Company, LLC d/b/a Sun Herald ("McClatchy"), from November 2020 to present.

ANSWER: Tony Gray is the manager of general classifieds, and he works with Shannon Hayden, who manages an advertising call center in Texas. These are the people who handle classified ads.

INTERROGATORY NO. 4: Please cite your role, duties, responsibility(ies), and authority for any and all decisions concerning the solicitation, editing, and publication process(es) for advertisements at McClatchy, from November 2020 to present.

ANSWER: I have no role in the solicitation, editing, and publication process(es) for advertisements at McClatchy from November 2020 to present.

INTERROGATORY NO. 5: Describe any educational or work-related coursework, degrees, certifications, licenses, and/or training you have received as it relates to newspapers, advertisements, journalism, and the solicitation, editing, and publication process of newspapers and advertisements, and include in your response:

- (a) The title and/or description of said coursework, degree, certification, license, and/or training;
- (b) The authority who administered or granted said coursework, degree, certification, license, and/or training; and
  - (c) The date conferred or completed.

ANSWER: I have a bachelor's degree in journalism from LSU in 1988. I have attended management training at the Poynter Institute in Florida in 1996 and 2001. I have a completed a Kiplinger Fellowship at Ohio State University in 2015. I am a graduate of the Local Media Association's fundraising cohort in 2020. In 2018, I attended and graduated from "Blueprint," a McClatchy-sponsored training program in Dallas, Texas, on how to sell advertising, though classified ads were not a specific part of the program.

(INTERROGATIORY NO.6: Identify and describe all communications and/or meetings) you have that with any McClatchy agent, servant, employee lete: for with any other company, entity, or person(s) (including Plaintiffs) regarding (1) Plaintiffs, Charles Lamont Fountain and Robert Izee Lett; III, and (2) the subject matter of this litigation.

(Please include in your response:

- ((a) The date(s) of each communication or meeting;
- (b) The method(s) of communication;
- (c) The identity of the company; entity, or person(s) who received or sent the communication;
  - (d) The identity of the individuals present at each meeting;

    (and (e) The substance of the communication or discussion at each meeting.)

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ANSWER: Upon learning of the ad on December 8, 2020, I sent email messages to Tony Berg and Dan Morgenstern requesting assistance to find out how the ad was placed. They began looking into it, I had a telephone conversation with Mr. Berg on December 9 where he explained to me he found that the ad came in via a computer portal and that fake or edentials may have been used. Mr. Morgenstern sent an email with similar information I had conversations with Sarah Patterson and Kerry (Bean about print related issues concerning the ad Sometime that same week, I had a (telephone conversation with my boss, Robyn Tomlin, to tell her what happened and loop) her linto things)

I object to furnishing any information covered by the attorney-client privilege and work product of counsel.

Respectfully submitted, this the  $\frac{2}{2}$ 

day of October, 2021.

le\_10-29-Bl

BLAKE KAPLAN

As to Objections:

Henry Laird

Email: hfl@wisecarter.com

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

## STATE OF

### **COUNTY OF**

Personally appeared before me, the undersigned authority in and for the County and State aforesaid, on this the 29th day of October, 2021, within my jurisdiction, the within named BLAKE KAPLAN who upon oath, states that the matters and facts set forth above in the above and foregoing answers to interrogatories are true and correct as therein state, and where stated on information and belief, he verily believes the same to be true.

By:

Blake Kaplan

SWORN TO AND SUBSCRIBED BEFORE ME, this the 29th day of October,

NOTARY PUBLIC ID No. 46491 Commission Expires

2021.

My Commission Expires:

NOTARY PUBLIC

### CERTIFICATE OF SERVICE

I, Henry Laird, do hereby certify that I have sent a true and correct copy of the foregoing by regular U.S. Mail and Email:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal..com

Attorney for Plaintiffs

This the \_\_\_\_\_day of October, 2021.

Henry Laird

Henry Laird (MSB No. 1774) Email: hfl@wisecarter.com

Wise Carter Child & Caraway, P.A.

2510 141/h Street, Suite 1125

Gulfport, MS 39501

## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# DEFENDANT BLAKE KAPLAN'S RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS PRODUCTION OF DOCUMENTS

COMES NOW Defendant, Blake Kaplan, and responds to Plaintiffs' First Set of Requests for Production of Documents as follows:

REQUEST NO. 1: Please produce a copy of the Advertisement for each publication issued, by date and medium (McClatchy Interrog. No. 5.)

RESPONSE:

Please see Attachment No. 1.

REQUEST NO. 2: Please produce a copy of any written memorandum or order submitted in the publication request for the Advertisement. (McClatchy Interrog. No. 9.)

RESPONSE: Please refer to responses from Defendant, The McClatchy Company, LLC.

REQUEST NO. 3: Please produce a copy of the rules, guidelines, procedures, and/or terms and conditions in effect and used during the period of January 1, 2020 through December 31, 2020 for McClatchy's online Classified Self-Service Site.

RESPONSE:

Please refer to responses from Defendant, The McClatchy

Company, LLC.



(if recorded) response or comment provided to you by any person or entity to include but not limited to Plaintiff and the public at large. (McClatchy Interrog. No.:15:8:16:)

(RESPONSE: Please see audio recordings in Attachment No. 4)

REQUEST NO. 5: Please produce all documents and/or communications (including written memorandum, electronic mail, facsimile, recorded oral communication, text message, etc.) related to any meeting or communication held to discuss the Advertisement or publication thereof. Note: In requesting this documentation, Plaintiffs only seek information kept in the regular course of business, and not in anticipate of litigation or for the purposes of legal consultation. (Chatham Interrog. No. 5; McClatchy Interrog. 17; and Kaplan Interrog. No. 6.)

**RESPONSE:** I have no such documents.

REQUEST NO. 6: Please provide a copy of the written and signed job descriptions, duties, and/or responsibilities for advertising department employees (including but not limited to general employees, directors, managers, supervisors, etc.) and editors (including but not limited to the Executive Editor, Managing Editor, (Chief) Copy Editor, etc.). Specifically, as it relates to this request, please provide the written and signed job description, duties, and/or responsibilities for Blake Kaplan. (Kaplan Interrog. No. 4.)

RESPONSE: Production will not be allowed because the request is overly broad and burdensome and not calculated to lead to discovery of admissible evidence except this Defendant has no such documents.

REQUEST NO. 7: Please produce all employee manuals, handbooks, training

materials, and required rules or procedures for advertising department employees

(including but not limited to general employees, directors, managers, supervisors, etc.)

and editors (including but not limited to the Executive Editor, Managing Editor, (Chief)

Copy Editor, etc.), in effect and used during the period of January 1, 2020 through

December 31, 2020.

RESPONSE:

I have no such documents.

REQUEST NO. 8: Please produce declaration pages for any insurance

agreements, including excess polices, umbrella policies, self-insurance arrangements, or

any other policy owned or application to you that may satisfy part or all of any judgment

which may be entered against you or to reimburse you for payments made to satisfy such

a judgment.

RESPONSE:

Please refer to responses from Defendant, The McClatchy

Company, LLC.

**REQUEST NO. 9:** At is relates to each expert witness you expect to call at trial,

please produce a copy of his/her:

(a) Written report;

(b) The exhibits utilized in summarization or support of his/her opinions; and

(c) Current resume and/or curriculum vitae.

(McClatchy Interrog. No. 22.)

RESPONSE:

I have no such documents.

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Cases 2050 to 1120 v 30 005 59 - DH Documente + 13#-30-2 File 61 02/24/2022 1Pade at 1240 1250 3

REQUEST NO. 10: For all interrogatory responses not specifically identified above, please provide any and all documents and communications identified or referred to in your responses to Plaintiff's First Set of Interrogatories.

RESPONSE:

I have no such documents.

Respectfully submitted, this the 29 day of October, 2021.

Henry Laird

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Email: hfl@wisecarter.com Telephone: 228/867-7141 Facsimile: 228/867-7142

As to Objections:

Henry Laird

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Email: <a href="https://https:

### **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I have sent a true and correct copy of the foregoing by regular U.S. Mail and Email:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: imitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 39 day of October, 2021.

Henry Laird

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>
Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

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### TRANSCRIPTION OF REQUEST NO. 4

"Yes sir, my name is Robert Lett. My number is (228) 249-4963. I'm calling because there was an ad put up in the Classified... falsely, like it was from thhhe-- Department of Health. From the State of Mississippi. Stating that I needed to be tested for HIV. Along with two other gentlemen. Annud-- I called the State Department, and it's not true. And I was trying to call and see how it was allowed to be posted. Against HIPAA laws and everything when it's not the truth? So, could you please give me a call back? As soon as you can? Thank yah."

Transcribed this the 11th day of November 2021, by:

Karmel LeDonia Keeton (MSB No. 106308)



# Case 30 Clock - 24-0016510 H-DHD oct of 203

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

 $\mathbf{v}$ .

CIVIL ACTION NO. 30Cl1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

#### NOTICE OF SERVICE

NOTICE is hereby given that Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain have this day served the following:

Plaintiffs' Second Set of Requests for Production of Documents to Defendant, The McClatchy Company, LLC D/B/A Sun Herald.

The undersigned retains the original of the above pleading as custodian thereof.

RESPECTFULLY SUBMITTED, this the 29th day of November 2021.

ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

/s/ Karmel L. Keeton Karmel L. Keeton (MS Bar No. 106308)

Jesse Mitchell, III (MS Bar No. 103020)
Attorneys for Plaintiffs

#### OF COUNSEL:

The Mitchell Firm, PLLC 1062 Highland Colony Parkway, Ste. 150 Ridgeland, Mississippi 39157 Telephone: 769.300.0462 Facsimile: 601.510.1981

Email: jmitchell@tmflegal.com kkeeton@tmflegal.com

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# **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Kecton</u>, attorney for Plaintiffs, do hereby certify that a true and correct copy of the foregoing pleadings have been sent to the following:

Henry Laird Wise Carter Child & Caraway, P.A. 2510 14th Street, Ste. 1125 Gulfport, Mississippi 39501 Telephone: 228.867.7141

Facsimile: 228.867.7142 Email: hfl@wisecarter.com

THIS, the 29th day of November 2021

BY: /s/ Karmel L. Keeton
Karmel L. Keeton

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

**DEFENDANTS** 

# DEFENDANT, THE McCLATCHY COMPANY, LLC'S NOTICE OF SERVICE

COME NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant, The McClatchy Company, LLC's, First Set of Interrogatories Propounded to Plaintiff, Robert Lett, III;
- 2. Defendant, The McClatchy Company, LLC's, First Set of Requests for Production of Documents Propounded to Plaintiff, Robert Lett, III;
- 3. Defendant, The McClatchy Company, LLC's, First Set of Request for Admissions Propounded to Plaintiff, Robert Lett, III;
- 4. Defendant, The McClatchy Company, LLC's, First Set of Interrogatories Propounded to Plaintiff, Charles Fountain;
- 5. Defendant, The McClatchy Company, LLC's, First Set of Requests for Production of Documents Propounded to Plaintiff, Charles Fountain; and
- 6. Defendant, The McClatchy Company, LLC's, First Set of Request for Admissions Propounded to Plaintiff, Charles Fountain.

Respectfully submitted, this the 29th day of December, 2021.

THE McCLATCHY COMPANY, LLC Defendant

BY: s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14th Street, Suite 1125 Gulfport, MS 39501

# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 29th day of December, 2021.

s/ Henry Laird	s/ Henry Laird	<u>_</u>
----------------	----------------	----------

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14th Street, Suite 1125 Gulfport, MS 39501

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# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

DEFENDANTS

# DEFENDANT, THE McCLATCHY COMPANY, LLC'S NOTICE OF SERVICE

COME NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant, The McClatchy Company, LLC's, Responses to Plaintiff, Robert Lett, III's, Second Set of Requests for Production; and
- 2. Defendant, The McClatchy Company, LLC's, Responses to Plaintiff, Charles Fountain's, Second Set of Requests for Production.

Respectfully submitted, this the 24th day of January, 2022.

THE McCLATCHY COMPANY, LLC Defendant

BY:

s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <u>hfl@wisecarter.com</u>

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Case: 30. Gla: 21-24-40185195-DHDOCDWGUTHEN 7:133 FILE # 02 # 12 # 12 Page 01:83 of 203

# **CERTIFICATE OF SERVICE**

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 24th day of January, 2022.

s/ Henry Laird

Henry Laird (MSB No. 1774)
Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a>
Wise Carter Child & Caraway, P.A.
2510 14<sup>th</sup> Street, Suite 1125
Gulfport, MS 39501

Case: 32.031.01.01.6510 - D. Doctoro entrien 7:134 Fill ide 02.024220222 Page 9:84 of 203

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III and CHARLES FOUNTAIN

**PLAINTIFFS** 

V.

**CIVIL ACTION NO. 30CI1:21-cv-00135-DH** 

CHATHAM ASSET MANAGEMENT, LLC; THE McCLATCHY COMPANY, LLC d/b/a/ SUN HERALD; BLAKE KAPLAN; and JOHN DOES 1-12

DEFENDANTS

# DEFENDANT, THE McCLATCHY COMPANY, LLC'S NOTICE OF SERVICE

COME NOW Defendant, The McClatchy Company, LLC, by and through counsel of record and gives notice to the Court that the following discovery has been mailed and emailed to opposing counsel:

- 1. Defendant, The McClatchy Company, LLC's, First Supplemental Interrogatory Propounded to Plaintiff, Robert Lett, III; and
- 2. Defendant, The McClatchy Company, LLC's, First Supplemental Interrogatory Propounded to Plaintiff, Charles Fountain.

Respectfully submitted, this the 24th day of January, 2022.

THE McCLATCHY COMPANY, LLC Defendant

BY:

s/ Henry Laird

HENRY LAIRD (MSB 1774)

Henry Laird (MSB No. 1774) Email: <u>hfl@wisecarter.com</u>

Wise Carter Child & Caraway, P.A.

2510 14th Street, Suite 1125

Gulfport, MS 39501

Case 39. G1 21-24-0016510 H-DHDOCPMENT #134 File 11:02/02/02/02/02 Parectes of 203

# - CERTIFICATE OF SERVICE

I, Henry Laird, do hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notification of such filing to the following:

Jessie Mitchell, III
Karmel Keeton
The Mitchell Firm, PLLC
1062 Highland Colony Parkway, Suite 150
Ridgeland, MS 39157
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com

Attorney for Plaintiffs

This the 24th day of January, 2022.

s/ Henry Laird	
----------------	--

Henry Laird (MSB No. 1774) Email: <a href="mailto:hfl@wisecarter.com">hfl@wisecarter.com</a> Wise Carter Child & Caraway, P.A. 2510 14<sup>th</sup> Street, Suite 1125 Gulfport, MS 39501

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

v.

**CIVIL ACTION NO. 21-135(3)** 

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

#### NOTICE OF SERVICE

NOTICE is hereby given that Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain have this day served the following documents upon opposing counsel via first class mail and electronic correspondence:

- 1. Plaintiff, Robert Lett's, Responses to Defendant, The McClatchy Company, LLC's, First Set of Requests for Admissions; and
- 2. Plaintiff, Charles Fountain's, Responses to Defendant, The McClatchy Company, LLC's, First Set of Requests for Admissions;

RESPECTFULLY SUBMITTED, this the 28th day of January 2022.

ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

BY: /s/ Karmel LeDonia Keeton

Jesse Mitchell, III (MS Bar No. 103020)

Karmel LeDonia Keeton (MS Bar No. 106308)

Attorneys for Plaintiff

Case: 30.31:21-21-00135134-DHOCHMENH #17135 FIFTHE 02012022 Page 982 of 203

## OF COUNSEL:

The Mitchell Firm, PLLC 1062 Highland Colony Parkway, Ste. 150 Ridgeland, Mississippi 39157

Telephone: 769.300.0462 Facsimile: 601.510.1981

Email: jmitchell@tmflegal.com kkeeton@tmflegal.com legalassistant@tmflegal.com

# **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Keeton</u>, attorney for Plaintiffs, hereby certify that I electronically filed the foregoing pleading with the Clerk of the Court using the MEC system which sent notice of said filing to the following:

Henry Laird Wise Carter Child & Caraway, P.A. 2510 14th Street, Ste. 1125 Gulfport, Mississippi 39501 Telephone: 228.867.7141

Facsimile: 228.867.7142 Email: hfl@wisecarter.com

THIS, the 28th day of January 2022.

/s/ Karmel LeDonia Keeton
Karmel LeDonia Keeton (MS Bar No. 106308)

Rannel LeDolla Recton (No Dat No. 100500

Case: 39.96:21-24-00166195-DIPOCHOENTER #136 FILENE 820241202022 Pagages of 203

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

**CIVIL ACTION NO: 21-135** 

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

## PLAINTIFFS' MOTION FOR SEVERANCE OF CLAIMS

COME NOW, Plaintiffs, Robert Lee Lett, III and Charles Lamont Fountain, and file this their Motion for Severance of Claims. In support of said Motion, Plaintiffs state to wit the following:

- 1. Plaintiffs filed their Complaint against Defendants, Chatham Asset Management, LLC; The McClatchy Company, LLC d/b/a Sun Herald; and Blake Kaplan, on August 9, 2021. MEC No. 2.
- 2. In their Complaint, Plaintiffs allege defamation (or in the alternative, invasion of privacy false light) as a result of Defendants' negligent publication of a libelous advertisement (the "Advertisement") imputing a loathsome disease to Plaintiffs, which was published both in print and online within in the Biloxi Sun Herald newspaper on December 8 and 9, 2020. Id.
- 3. As Plaintiffs' claims arise out of the same nucleus of operative fact and law, and Plaintiffs seek the same right to relief, for efficiency and economy purposes, Plaintiffs claims were jointly filed by means of permissive joinder.

# 4. Generally,

[a]ll persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction,

Case 30 C30 C11-C21 QQ1 35-1215-DIPOC WTO BUTHER #136 File de Q2 122/120 20 22 Page 482 of 203

occurrence, or series of transactions or occurrences, and if any question of law or fact common to all these persons will arise in the action.

Miss. R. Civ. P. 20(a).

- 5. Although properly joined, due to recent events—namely, the incarceration of Fountain—Plaintiffs now seek to sever their case into two, separate and distinct actions.
- 6. When parties are improperly joined, the proper form of relief is severance. See Miss. R. Civ. P. 21. Nonetheless, severance may also be obtained in order to "prevent delay or prejudice" pursuant to Rule 20(b) of the Mississippi Rules of Civil Procedure. Miss. R. Civ. P. 20(b).

The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

Id. Moreover, the ordering of separate trials is also applicable under Rule 42(b) of the Mississippi Rules of Civil Procedure, which states that:

[t]he court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counter-claim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counter-claims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by Section 31 of the Mississippi Constitution of 1890.

Miss. R. Civ. P. 42(b).

- 7. On September 14, 2021, Fountain was sentenced to serve a concurrent term of eight years in the Mississippi Department of Corrections for two counts of Possession of Controlled Substance and one count of Marijuana Possession. See Exhibit "A" Inmate Details. As such, Fountain's release is tentatively set for September 12, 2029. Id.
- 8. Prior to sentencing, Fountain worked at S.T. Engineer Halter Marine and Offshore as a painter and blaster.
- 9. Fountain's incarceration, while unrelated and irrelevant to Plaintiffs' claims against Defendants, unduly prejudices Lett due to no fault of his own, creating issues of expense, delay, and

Case: 30 C36 C41-24-00185-135-DIPOCHOBERTHEIN #136 Filede 02 124/2012022 Page 4.00 of 203

bias, as well as the potential to confuse the issues and mislead the jury. In the interest of justice and judicial efficiency, therefore, Plaintiffs pray this Court sever this matter into two, separate and distinct actions.

- 10. Granting or denying severance lies within the trial court's broad discretion. See Wyeth-Ayerst Labs v. Caldwell, 905 So. 2d 1205, 1207 (¶ 6) (Miss. 2005). In making its determination, "the trial court "must weigh whether one trial or separate trials will best serve the convenience of the parties and court, avoid prejudice, and minimize expense and delay. The major consideration, of course, must be which procedure is more likely to result in a just, final disposition of the litigation." Capital City Ins. Co. v. G.B. "Boots" Smith Corp., 889 So. 2d 505, 509 (¶ 10) (Miss. 2004) (citing Miss. R. Civ. P. 42(b) cmt.).
- 11. At best, trying Plaintiffs' claims together will only assist with the production, timing, and cost of discovery that is within Defendants' possession. This discovery can easily be consolidated by the Court however, if deemed necessary. Access to discovery possessed by Fountain, including his ability to provide documentation and releases, be deposed, and to speak with experts, will likely be prolonged due to his incarceration, and may result in additional expenses for both counsel and client as it relates to communication, travel, documentation, etc. In this vein, judicial economy would not be best met through a single action.
- 12. More importantly however, Fountain's incarceration unduly prejudices Lett, not only through delay of discovery, and likely trial, but also through bias, which will likely confuse the issues and mislead the jury. As Plaintiffs' defamation claim involves their reputation within the community, Fountain's incarceration, while unrelated to Plaintiffs' claims against Defendants, has the likelihood to taint the jury against Lett. In order for justice to be best served, separation of Plaintiffs' case is warranted.

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Case; 30 C36 24-24 00 1 35 1 35 - Dipoc procurrent #136 Filed e 02 124/2020 20 22 Page 49 11 of 20 3

13. Plaintiffs respectfully move this Court for an order severing their claims against Defendants on the grounds that the joining in one action and one complaint is individually prejudicial to Plaintiffs, injures their substantial rights, will cause embarrassment and undue expense, will confuse the issues and mislead the jury, and will delay trial.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, Robert Lee Lett, III and Charles

Lamont Fountain, pray this Court separate their case into two, separate and distinct actions.

RESPECTFULLY SUBMITTED, this the 16th day of February 2022.

ROBERT LEE LETT, III AND CHARLES LAMONT FOUNTAIN

By:

/s/ Karmel L. Keeton

Karmel LeDonia Keeton (MSB No. 106308) Jesse Mitchell, III (MSB No. 103020)

Attorneys for Plaintiffs

#### OF COUNSEL:

The Mitchell Firm, PLLC 1062 Highland Colony Pkwy, Ste. 150 Ridgeland, Mississippi 39157 Telephone: 769.300.0462 Facsimile: 601.510.1981

Email: jmitchell@tmflegal.com

kkeeton@tmflegal.com legalassistant@tmflegal.com

# Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 376 of 387

Case 300 1624 02100135 Pst-Dipocumentien 7#136 Filente 02/02/2012022 Page 19201303

# **CERTIFICATE OF SERVICE**

I, <u>Karmel L. Keeton</u> hereby certify, that on <u>February 16, 2022</u>, I electronically filed the foregoing with the Clerk of Court using the ECF/MEC system which will send notification of such filing to all counsel of record.

RESPECTFULLY SUBMITTED,

By: /s/Karmel L. Keeton

Karmel LeDonia Keeton (MSB No. 106308)

Mississippi Department of Corrections: Promoting Public safety

INMATE SEARCH

# **Inmate Details**

# **CHARLES FOUNTAIN**

MDOC ID Number: 236200

Race: BLACK

Sex: MALE

Date of Birth: 07/20/1978

Height:

Weight:

Complexion:

**Build:** 

Eye Color:

Hair Color:

**Entry Date:** 

Location: SOUTH MISSISSIPPI COUNTY JAIL

UNIT: JACKSON CJ

**Location Change Date: 11/29/2021** 

Number of Sentences: 3

**Total Length: 8 YEARS** 

# **OFFENSE 1: POSSESSION OF CONTROLLED SUBSTANCE**

Sentence Length: 3 YEARS

County of Conviction: JACKSON---

**Sentence Date: 09/14/2021** 

# **OFFENSE 2: POSSESSION OF CONTROLLED SUBSTANCE**

**Sentence Length: 8 YEARS** 

County of Conviction: JACKSON

Sentence Date: 09/14/2021

# **OFFENSE 3: MARUUANA-POSSESS**

Sentence Length: 8 YEARS

**County of Conviction: JACKSON** 

Sentence Date: 09/14/2021

Tentative Release: 09/12/2029



## IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

DEFENDANTS

# PLAINTIFF, ROBERT LETT, III'S, RESPONSES TO DEFENDANT, THE MCCLATCHY COMPANY, LLC'S, FIRST SET OF REQUESTS FOR ADMISSIONS

COMBS NOW, Plaintiff, Robert Lee Lett, III, by and through undersigned counsel and pursuant to the Mississippi Rules of Civil Procedure 26 and 36, and submits this, his Responses to Defendant, The McClatchy Company, LLC's, First Set of Requests for Admissions as follows:

#### REQUESTS FOR ADMISSIONS

REQUEST NO. I: You communicated before the classified advertisement at issue in this litigation was published with the person or persons who place[d] the classified advertisement with the Sim Heald newspaper.

RESPONSE NO. 1: Plaintiff denies the truth of the matter requested.

REQUEST NO. 2: You communicated after the classified advertisement at issue in this litigation was published with the person or persons who place[d] the classified advertisement with the Sun Herald newspaper.

RESPONSE NO. 2: Plaintiff denies the truth of the matter requested.

REQUEST NO. 3: You have been told who place the classified advertisement at issue in this litigation.

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RESPONSE NO. 3: Plaintiff denies the truth of the matter requested. Plaintiff further states that he was advised by Defendants that the classified advertisement was placed online through the newspaper's advertisement web portal using a credit card and the Mississippi State Department of Health's (MSDH) address.

REQUEST.NO. 4: You have accused one or more persons of purchasing the classified advertisement at issue in this litigation.

RESPONSE NO. 4: Plaintiff denies the truth of the matter requested.

REQUEST NO. 5: You were not aware of the classified advertisement in the Sun Heald newspaper involved in this litigation before it was published in the Sun Heald newspaper.

RESPONSE NO. 5: Plaintiff admits the truth of the matter requested,

REQUEST NO. 6: You have communicated with the Mississippi Department of Health concerning the classified advertisement in the *Sun Health* newspaper involved in this litigation.

RESPONSE NO. 6: Plaintiff admits the truth of the matter requested.

REQUEST NO. 7: You do not know Neal Rainey who was referred to in the classified advertisement which is the subject of this litigation.

**RESPONSE NO. 7:** Plaintiff admits the truth of the matter requested.

REQUEST NO. 8: You have never been tested for any sexually transmitted disease, including but not limited to, HIV.

**RESPONSE NO. 8:** Plaintiff denies the truth of the matter requested.

REQUEST NO. 9: You have never tested negative for any sexually transmitted disease, including but not limited to, HIV.

RESPONSE NO. 9: Plaintiff, by and through undersigned counsel, objects to Request No. 9 on the grounds that the request is ambiguous/unintelligible and overbroad in scope, resulting in an invasion of privacy.

REQUEST NO. 10: You have never had contact with anyone who tested positive for any sexually transmitted disease, including but not limited to, HIV.

RESPONSE NO. 10: Plaintiff, by and through undersigned counsel, objects to Request No. 10 on the grounds that the request is ambiguous/unintelligible and overbroad in scope, resulting in an invasion of privacy.

REQUEST NO. II: You do not know anyone who reported to the Mississippi Department of Health that you may have had contact with someone who had a sexually transmitted disease, including but not limited to, HIV.

RESPONSE NO. 11: Plaintiff admits the truth of the matter requested, to his knowledge.

REQUEST NO. 12: The amount of your claim in this litigation is greater than \$75,000,00.

RESPONSE NO. 12: Plaintiff, by and through undersigned counsel, objects to Request No. 12 on the grounds that the request calls for an expert opinion and/or a determination of damages, which is a matter to be left to the fact finder.

REQUEST NO. 13: The amount of your claim in this litigation is greater than \$100,000.00.

RESPONSE NO. 13: Plaintiff, by and through undersigned counsel, objects to Request No. 13 on the grounds that the request calls for an expert opinion and/or a determination of damages, which is a matter to be left to the fact finder.

REQUEST NO. 14: The amount of your claim in this litigation is greater than \$250,000,00.

RESPONSE NO. 14: Plaintiff, by and through undersigned counsel, objects to Request No. 14 on the grounds that the request calls for an expert opinion and/or a determination of damages, which is a matter to be left to the fact finder.

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REQUEST NO. 15: The amount of your claim in this litigation is less than \$75,000.00.

RESPONSE NO. 15: Plaintiff, by and through undersigned counsel, objects to Request

No. 15 on the grounds that the request calls for an expert opinion and/or a determination of damages, which is a matter to be left to the fact finder.

Plaintiff reserves the right to supplement and amend his responses.

RESPECTFULLY SUBMITTED, this the 28th day of January 2022.

#### ROBERT LEE LETT, III

By: /s/ Karmel LeDonia Keeton

Jesse Mitchell, HI (MS Bar No. 103020) Karmel LeDonia Keeton (MS Bar No. 106308) Attorneys for Plaintiff

# OF COUNSEL:

The Mitchell Firm, PLLC 1062 Highland Colony Pkwy, Stc. 150 Ridgeland, Mississippi 39157 Telephone: 769.300.0462 Facsimile: 601.510.1981 Email: jmitchell@tmflegal.com

kkeeton@tmflegal.com legalassistant@tmflegal.com Case 1:22-cv-00038-HSO-RHWR Document 2 Filed 02/25/22 Page 382 of 387

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## VERIFICATION

I, Robert Lee Lett, III, being duly sworn, state that I am the Plaintiff in the above-captioned lawsuit, and as such, that I am duly authorized to sign this Verification. I have read the foregoing Responses to Defendant. The McClatchy Company, LLC's Pirst Set of Requests for Admissions and know the contents therein. The facts stated within have been assembled by authorized employees and attorneys of The Mitchell Firm, PLLC, whom I retain as counsel. I am informed and verify that the facts stated therein are true and correct to the best of my knowledge, information, and belief.

1-28-22	flow to	
Date	Robert Lee Lett. III, I	

SUBSCRIBED AND SWORN TO, before me, this undersigned notary public, on this the

Date

Date

Signature of Notary Public

(SICAL)

TE OF MISS/GS

SIBRAPOL

MODERY FUELC

D. No. 66214

Commission Expres

February 11, 2023

Case: 30Cl1:21-cv-00135-DH Document #: 37-1 Filed: 02/24/2022 Page 199 of 203

# IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

ROBERT LETT, III AND CHARLES FOUNTAIN

**PLAINTIFFS** 

٧.

CIVIL ACTION NO. 30CI1:21-cv-00135-DH

CHATHAM ASSET MANAGEMENT, LLC; THE MCCLATCHY COMPANY, LLC D/B/A SUN HERALD; BLAKE KAPLAN; AND JOHN DOES 1-12

**DEFENDANTS** 

PLAINTIFF, CHARLES FOUNTAIN'S, RESPONSES TO DEFENDANT, THE MCCLATCHY COMPANY, LLC'S, FIRST SET OF REQUESTS FOR ADMISSIONS

COMES NOW, Plaintiff, Charles Lamont Fountain, by and through undersigned counsel and pursuant to the Mississippi Rules of Civil Procedure 26 and 36, and submits this, his Responses to Defendant, The McClatchy Company, LLC's, First Set of Requests for Admissions as follows:

#### REQUESTS FOR ADMISSIONS

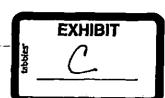
REQUEST NO. 1: You communicated before the classified advertisement at issue in this litigation was published with the person or persons who place[d] the classified advertisement with the Sun Herald newspaper.

RESPONSE NO. 1: Plaintiff denies the truth of the matter requested.

REQUEST NO. 2: You communicated after the classified advertisement at issue in this litigation was published with the person or persons who place[d] the classified advertisement with the Sun Herald newspaper.

RESPONSE NO. 2: Plaintiff denies the truth of the matter requested.

REQUEST NO. 3: You have been told who place the classified advertisement at issue in this litigation.



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RESPONSE NO. 3: Plaintiff denies the truth of the matter requested. Plaintiff further states that he was advised by Defendants that the classified advertisement was placed online through the newspaper's advertisement web portal using a credit card and the Mississippi State Department of Health's (MSDH) address.

REQUEST NO. 4: You have accused one or more persons of purchasing the classified advertisement at issue in this litigation.

RESPONSE NO. 4: Plaintiff denies the truth of the matter requested.

REQUEST NO. 5: You were not aware of the classified advertisement in the Sun Herald newspaper involved in this litigation before it was published in the Sun Herald newspaper.

RESPONSE NO. 5: Plaintiff admits the truth of the matter requested.

REQUEST NO. 6: You have communicated with the Mississippi Department of Health concerning the classified advertisement in the Sun Herald newspaper involved in this litigation.

RESPONSE NO. 6: Plaintiff denies the truth of the matter requested.

REQUEST NO. 7: You do not know Neal Rainey who was referred to in the classified advertisement which is the subject of this litigation.

**RESPONSE NO. 7:** Plaintiff admits the truth of the matter requested.

REQUEST NO. 8: You have never been tested for any sexually transmitted disease, including but not limited to, HIV.

RESPONSE NO. 8: Plaintiff denies the truth of the matter requested. Plaintiff further states that he has been tested for sexually transmitted diseases (STDs), including but not limited to, HIV as a job requirement, as well as after the Advertisement's publication at the request of his fiancé, in order to negate the Advertisement's allegations.

REQUEST NO. 9: You have never tested negative for any sexually transmitted disease, including but not limited to, HIV.

RESPONSE NO. 9: Plaintiff, by and through undersigned counsel, objects to Request No. 9 on the grounds that the request is ambiguous/unintelligible and overbroad in scope, resulting in an invasion of privacy.

REQUEST NO. 10: You have never had contact with anyone who tested positive for any sexually transmitted disease, including but not limited to, HIV.

RESPONSE NO. 10: Plaintiff, by and through undersigned counsel, objects to Request No. 10 on the grounds that the request is ambiguous/unintelligible and overbroad in scope, resulting in an invasion of privacy.

REQUEST NO. 11: You do not know anyone who reported to the Mississippi Department of Health that you may have had contact with someone who had a sexually transmitted disease, including but not limited to, HIV.

RESPONSE NO. 11: To his knowledge, Plaintiff admits the truth of the matter requested.

REQUEST NO. 12: The amount of your claim in this litigation is greater than \$75,000.00.

RESPONSE NO. 12: Plaintiff, by and through undersigned counsel, objects to Request No. 12 on the grounds that the request calls for an expert opinion and/or a determination of damages, which is a matter to be left to the fact finder.

REQUEST NO. 13: The amount of your claim in this litigation is greater than \$100,000.00.

RESPONSE NO. 13: Plaintiff, by and through undersigned counsel, objects to Request No. 13 on the grounds that the request calls for an expert opinion and/or a determination of damages, which is a matter to be left to the fact finder.

REQUEST NO. 14: The amount of your claim in this litigation is greater than \$250,000.00.

RESPONSE NO. 14: Plaintiff, by and through undersigned counsel, objects to Request No. 14 on the grounds that the request calls for an expert opinion and/or a determination of damages, which is a matter to be left to the fact finder.

REQUEST NO. 15: The amount of your claim in this litigation is less than \$75,000.00.

RESPONSE NO. 15: Plaintiff, by and through undersigned counsel, objects to Request No. 15 on the grounds that the request calls for an expert opinion and/or a determination of damages, which is a matter to be left to the fact finder.

Plaintiff reserves the right to supplement and amend his responses.

RESPECTFULLY SUBMITTED, this the 28th day of January 2022.

#### CHARLES LAMONT FOUNTAIN

By: /s/ Karmel LeDonia Keeton

Jesse Mitchell, III (MS Bar No. 103020)

Karmel LeDonia Keeton (MS Bar No. 106308)

Attorneys for Plaintiff

#### OF COUNSEL:

The Mitchell Firm, PLLC
1062 Highland Colony Pkwy, Ste. 150
Ridgeland, Mississippl 39157
Telephone: 769.300.0462
Facsimile: 601.510.1981
Email: jmitchell@tmflegal.com
kkeeton@tmflegal.com
legalassistant@tmflegal.com

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Case: 30Cl1:21-cv-00135-DH Document #: 37-1 Filed: 02/24/2022 Page 203 of 203

#### **VERIFICATION**

I, Charles Lamont Fountain, being duly swom, state that I am the Plaintiff in the abovecaptioned lawsuit, and as such, that I am duly authorized to sign this Verification. I have read the foregoing Responses to Defendant, The McClatchy Company, LLC's First Set of Requests for Admissions and know the contents therein. The facts stated within have been assembled by authorized employees and attorneys of The Mitchell Firm, PLLC, whom I retain as counsel. I am informed and verify that the facts stated therein are true and correct to the best of my knowledge, information, and belief.

1-27-22 Date

SUBSCRIBED AND SWORN TO, before me, this undersigned notary public, on this the day of January 2022.

